

INFORMATION ON THE DECLARATION OF NULLITY PROCESS

If someone has previously entered into marriage and is now separated or divorced, even if he or she currently has no plans for any future wedding, the following information should be helpful in exploring the process of a Church declaration of nullity so that a person can know his or her status and whether he or she is free to enter into a future marriage.

Doctrinal Background: What is Marriage and What is a Church Declaration of Nullity?

“The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of offspring, has been raised by Christ the Lord to the dignity of a sacrament between the baptized.” (c. 1055 §1; cf. CCC §1601)

Marriage is a natural institution, rooted in who we are as human beings – male and female. Marriage, by its very nature, is between one man and one woman. Our Lord Jesus Christ elevated the natural institution of marriage to be a sacrament among the baptized. When a marriage involves someone who is not baptized, whether that person has married another unbaptized person or whether that person has married a baptized person, there is a **natural** bond of marriage between these two people. When two baptized persons marry, there is a **sacramental** bond between them (see c. 1055 §2). According to Church teaching, rooted in the teachings of Jesus Christ, a consummated marriage between two baptized persons is perpetually binding and cannot be dissolved by any human power.

“But from the beginning of creation, ‘God made them male and female. For this reason a man shall leave his father and mother [and be joined to his wife], and the two shall become one flesh.’ So they are no longer two but one flesh. Therefore what God has joined together, no human being must separate.” In the house the disciples again questioned him about this. He said to them, “Whoever divorces his wife and marries another commits adultery against her; and if she divorces her husband and marries another, she commits adultery.” (Mark 10:6-12)

Marriage, whether a natural bond or a sacramental bond, ends with the death of one of the spouses. Divorce does not end marriage, although it can end the merely civil effects of marriage. Someone who has gotten married, even if that marriage involves separation or divorce, cannot enter into another marriage; this is of Divine Law.

At its core, marriage is a contract, but it is a very particular type of contract in which God writes the terms, and a man and woman enter in together. It is the consent of the parties that makes a marriage (c. 1057 §1). The parties who are involved in a broken marital relationship have a right to know their status, that is, to know whether their previous attempt at marriage was valid, and, therefore, whether they are free to enter into a future marriage. As such, either party to a marriage can petition an ecclesiastical tribunal to have their marriage examined to determine whether it was, in fact, valid. This is the declaration of nullity process.

The purpose of this process is to investigate whether there ever was a previous marriage between the two people in question, even though it might have seemed like there was at the time of the

wedding and beyond. An ecclesiastical declaration of nullity is a formal statement of a Church tribunal that a particular marriage never was a valid marriage in the true sense according to the nature of marriage and the teachings of the Catholic Church. It is important to recognize that a tribunal is not making the determination as to whether a marriage was a sacrament; a marriage between the baptized is always a sacrament. A tribunal is making the determination as to whether there was ever a marriage to begin with. Furthermore, when a tribunal rules that a previous attempt at marriage was invalid, it is not stating that there was never any relationship between the parties, nor is it stating that any events, good or bad, which occurred during that relationship never happened. What the tribunal is stating is that this relationship, although it may have looked like a marriage, was never a valid marriage.

Every previous attempt at marriage needs to be investigated by a tribunal before **any** date can be set for any future wedding. If there was a wedding, that exchange of consent needs to be investigated. This includes weddings which took place between Catholics, between non-Catholics, and between a Catholic and a non-Catholic. This includes weddings that were officiated at by a Catholic minister, by a non-Catholic minister, by a non-Christian religious leader, by a civil judge, by a civil magistrate, by a justice of the peace, etc. This includes weddings that took place in the United States or that took place in another country. **Every** previous attempt at marriage needs to be investigated; there are no weddings that “do not count.” If there has been a wedding, it needs to be investigated.

It is important to note that while in common parlance this process is termed an “annulment,” that word does not accurately describe the process or what is happening in it. The word “annulment” is based on an active verb – to annul something is to take something that exists and then to make it nonexistent in a way that is retroactive so that it is like it never existed; it is to actively invalidate something from the beginning. That is not what is happening in this process. That is why this process is properly called a “declaration of nullity” process. It is an investigation by an ecclesiastical tribunal as to whether or not a marriage was valid from its very beginning. If it is determined that something, even though it might not have been known at the time of the wedding, prevented a couple from validly entering into marriage, then the marriage is declared null, that is, it was always null from the beginning, even though that was not known at the time.

This document applies to what is known as a **formal trial**. This is different from another type of process called a lack of canonical form process, which usually, **but not always**, applies when someone who was baptized Catholic or who was received into the Church (such as through the RCIA process), as proven by a Catholic baptismal certificate or a Profession of Faith certificate, **subsequently** had a non-Catholic wedding without the proper approval from the Church. For this person, the validity of his or her wedding in the eyes of God requires a Catholic wedding ceremony unless the Church has authorized otherwise. The same would be the case for someone who was Eastern Orthodox at the time of the wedding and is in a similar situation.

In a formal trial, neither party is “on trial” in this process; the marriage itself is what is being investigated as to whether it was valid or not. **For a formal trial, the marriage has the favor of the law, that is, it is presumed valid until proven otherwise (c. 1060)**. Nothing needs to be done to prove the marriage was valid in this process; the burden of proof is in demonstrating that the marriage was invalid.

A tribunal advocate will help the Petitioner determine what grounds to pursue in his or her case. These grounds are what the Tribunal will specifically be investigating in terms of things that could have potentially resulted in an invalid marriage. Canonical jurisprudence, over the centuries, has determined what could potentially invalidate the consent exchanged by the parties at their wedding, and these make up the potential grounds for a formal trial. Some of these grounds are based upon the intentions of the parties at the time, some grounds involve what was affecting a person's will at the time of the wedding, while others involve psychic anomalies that might have been influencing one or both of the parties at the time of the wedding, although they might not have realized this at the time. The grounds for each case will be determined based upon the particulars of the Petitioner's background, the Respondent's background, and what happened in the relationship both before and after the wedding. **Please note, the mere fact that infidelity occurred during the common life of the parties after their wedding does not, in and of itself, invalidate the consent of the parties.**

Since, in the United States of America, an ecclesiastical declaration of nullity has **no effect in civil law**, a civil decree of divorce or civil annulment must be granted prior to applying for an ecclesiastical declaration of nullity. That way, the merely civil aspects of marriage, which the State has a legitimate claim to oversee (see c. 1059), are already resolved. Additionally, the Tribunal cannot begin this process until the judge has determined that the relationship between the parties has irreparably failed such that conjugal living cannot be restored (c. 1675); the civil divorce also serves as proof of this. The Tribunal's investigation will not begin until the civil action is completed. **Children born to the union under investigation in a formal trial are and remain legitimate in the eyes of the Church (c. 1137).**

It is also important to note that a declaration of nullity is not a "gift," nor is the Tribunal making a determination of worthiness about the parties. The Tribunal is answering the question "Was this a valid marriage?" This process is not about assigning blame, but it is designed to determine the truth of the matter (was the marriage valid from the moment of consent at the wedding) as well as to uphold those things we value (e.g., Jesus' teaching on the intrinsic indissolubility of marriage).

Finally, **there is no guarantee of an affirmative decision in this process** (i.e., a guarantee that the previous attempt at marriage will be found to be invalid). Each case is unique, and each case is judged based upon its own particular grounds and the testimony gathered for that case.

The Petitioner

The Petitioner is the person who initiates the declaration of nullity process. As the Petitioner prepares his or her testimony, he or she may find parts of the questionnaire inquire about very intimate details of the life of both parties. Other questions may cause him or her to recall some aspects of the relationship which were not pleasant. The Tribunal's intent is not to assign guilt toward either party. Rather, the Tribunal attempts to gather sufficient factual information so a decision can be rendered.

The Respondent

The other party is called the Respondent. Church law respects the rights of the other party regarding these proceedings. The Tribunal must advise him/her of these rights. In order to begin the declaration of nullity process, the Tribunal needs the current mailing address of the

Respondent. If that is **legitimately** unknown, a good faith effort needs to be made in order to find his or her address. This can be done through Internet address searches, Facebook or other social media searches, contacting family members (especially adult children and/or members of the Respondent's family if contact has been maintained with them), and contacting friends (also consider members of the wedding party). Applications should not be submitted without the Respondent's address or a completed copy of the Tribunal's Whereabouts Form after a good effort has been made to obtain that address; the Whereabouts Form can be found [here](#).

The Respondent has these rights: to be notified that this process has started, to respond in writing, to provide testimony, to provide witnesses, to review the evidence in the case, to be advised of the decision, and to appeal the decision. A Respondent's refusal to participate will not jeopardize the continuation of the case.

Competence

Just like in civil courts, in order to hear a case, a tribunal must have competence, also known as jurisdiction. In the civil sphere, for example, a resident of the United States who wishes to begin legal proceedings against a company in the United States under United States law could not petition a court in the United Kingdom to hear the case. Similarly, a person who wishes to have a previous attempt at marriage investigated by an ecclesiastical tribunal must approach one that has competence to adjudicate the matter. Competence of the Tribunal of the Diocese of Rockford is based on one or more of these criteria: the wedding in question took place in the Diocese of Rockford, the Petitioner lives within the jurisdictional boundaries of the Diocese of Rockford, the Respondent lives within the jurisdictional boundaries of the Diocese of Rockford, or the majority of proofs, in the determination of the Tribunal officials, are found in the Diocese of Rockford (c. 1672). If the Diocese of Rockford lacks jurisdiction to hear a case, the Tribunal will put the Petitioner in touch with the appropriate tribunal(s) in the diocese(s) that have jurisdiction.

Documents

In each formal trial, the following documents must be initially submitted: a completed application form, a copy of the civil marriage record, a signed (by the judge) and file dated copy of the divorce decree (the entire divorce decree is needed, not just the last page or some of the pages), a current copy of the Petitioner's photo ID (e.g., a driver's license), the narrative statement of the Petitioner, and a \$100.00 filing fee. Civil documents are issued by the county courthouse and/or the county clerk's office in which the event occurred.

Advocate

A tribunal advocate will be available to assist the Petitioner and/or the Respondent during the process. The advocates have training in canon law so as to better be able to assist in this process.

Witnesses

Every case requires witnesses. Witnesses can be relatives, especially parents and siblings, as well as friends (including members of the wedding party), who are willing to present information known to them about the Petitioner, the Respondent, and the marriage being investigated. Usually, four or more knowledgeable witnesses are sufficient. These witnesses should have known both

parties prior to the wedding as well as during the common life after the wedding. Additional witnesses could include counselors, psychologists, psychiatrists, and physicians. The testimony of the witnesses is instrumental in corroborating the testimony of the Petitioner and the Respondent. Ultimately, what the Tribunal wants from the witnesses is the truth about both parties and about what happened in their relationship both before and after their wedding, no matter how pleasant or unpleasant that truth may be. This assists the Tribunal in discovering the truth about whether the marriage in question is valid.

Confidentiality

Church law allows both the Petitioner and the Respondent to inspect the testimony submitted as part of the case prior to the final decision; this is called the Publication of the Acts. This is to allow the Petitioner and Respondent an opportunity to better argue their respective positions before the ecclesiastical tribunal. The Judge may declare particular parts of testimony as confidential and not available for inspection by the parties, although their advocates would still have access to them. Counseling/medical testimony is always considered confidential.

Fees

While the Diocese of Rockford assumes most of the costs to process a formal trial, the Tribunal does assess a fee of \$500.00. This includes the filing fee of \$100.00. Paid in installments, this fee is the Petitioner's contribution to help defray the expenses incurred. No one is ever denied a fair hearing because of an inability to pay this fee.

The declaration of nullity process for a formal trial is lengthy and the investigation is in-depth. Simply because a person applies for a declaration of nullity does not guarantee a favorable decision. Each case is unique, and each case is judged on its particular facts as established during the process. Because of the scope of the examination of each marriage in question, the number of pending cases, and the number of Tribunal staff available, a case, on average, can take at least 12 months before a decision is rendered. This timeframe starts on the day of the Petitioner's interview, not when the application for the formal trial was completed nor when it was received by the Tribunal. Permission to marry in the Catholic Church cannot be granted before the completion of the entire process, including any counselling that may be required to address any psychological issues before any future wedding. To avoid problems, **no plans** for a future marriage should be made before that time. By Diocesan law, pastoral ministers cannot set a date for a wedding until all previous attempts at marriage have been declared invalid by an ecclesiastical tribunal.

If a person wishes to complete an application to begin the declaration of nullity process, he or she can contact his or her parish priest or deacon for assistance. The Diocesan Tribunal can be contacted with any questions.

Diocesan Tribunal
Diocese of Rockford
P.O. Box 7044
Rockford, IL 61125
(815) 399-4300 – Ask for Tribunal Office

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