

Invalid Marriage

Archdiocese of Cincinnati

Tribunal Office
100 East Eighth Street
Cincinnati, Ohio 45202
(513) 421-3131
FAX (513) 723-1035

This brochure is an attempt to answer the most often-asked questions regarding Catholic Church “annulments”, **properly called declarations of nullity** . We offer this information to help those who have suffered through a divorce or dissolution understand the Church’s legal process for declaring a marriage invalid.

THE CHURCH’S APPROACH TO DIVORCE AND REMARRIAGE

The Catholic Church strives to teach what Jesus did and to be as compassionate as he was. Jesus confronted hard issues such as divorce and remarriage (Mt. 5:31-32, 19:3-12; Mk. 10:2-12; Lk. 16:18). He befriended the Samaritan woman at the well (Jn. 4:4-42) and challenged others to lay down stones of prejudice and harsh judgment (Jn. 8:1-11).

Jesus taught the norm: marriage is a permanent and exclusive partnership between a man and woman for the purposes of giving and receiving love open to the birth and nurture of children. The Catholic Church presumes every legitimate marriage to be valid and binding for life unless proven otherwise. This presumption applies regardless of the baptismal or religious status of the parties or the place where the wedding occurred.

In the tribunal process, the Church judges whether it has been proven that a specific failed marriage lacked something essential from the beginning, and, therefore, is invalid and not binding for life thus deserving a declaration of nullity.

A process developed in the early Church is the Pauline Privilege. St. Paul upheld Jesus’ teaching with an exception for the departure through divorce of a non-baptized party (1 Cor. 7:8-11 vs. 12-16). Paul’s exception leads to a dissolution of a valid civil marriage. The Church has extended this Pauline Privilege in the Privilege of the Faith. These cases are not declarations of nullity, but follow some of the same rules. They are not discussed here, but may apply if either or both spouses in a failed marriage was/were not baptized Christian.

WHAT IS A DECLARATION OF NULLITY?

A declaration of nullity is a declaration of a specific fact. This fact is that a civilly legal marriage between a man and woman lacked something essential from the beginning. For a particular reason, the Church may declare the union null and void from the beginning. According to the laws of the Catholic Church, the civilly legitimate union which is declared null was not spiritually binding for life, even if the wedding was celebrated before a priest and two witnesses.

A declaration of nullity is not a moral judgment of the parties. It is not the Church's approval of a civil divorce or dissolution. The Church's legal judgment does not place blame on one or the other spouse for the failure of the marriage. The only direct effect of a declaration of nullity is on the freedom of the spouses to marry in the Church.

EFFECTS OF A DECLARATION OF NULLITY ON CHILDREN

The children from a legitimate civil or church marriage remain legitimate even if the marriage is declared invalid. A declaration of nullity does not change the fact of parentage or the status of children.

WHO MAKES THIS DECLARATION?

This declaration is made by officials of the Catholic Church. These officials are members of the judicial staff of the Tribunal Office, a Church court whose primary purpose is to examine marriages that have ended in divorce or dissolution. These judges carefully examine the facts presented following the rules of the Code of Canon Law of the Catholic Church revised in 1983.

WHO CAN APPLY FOR A DECLARATION OF NULLITY?

Any person, Catholic or not, baptized or not, whose marriage has already civilly ended by a decree of divorce or dissolution, has the right to ask the Church to investigate the marriage for such a declaration. The person who applies and asks for a declaration is the petitioner.

The petitioner must have a geographical relationship with the Archdiocese or diocese where he/she applies, namely: 1) it is where the wedding took place; 2) it is the residence of the other party (the former spouse, the respondent); 3) it is where the petitioner resides; or 4) it is where most of the evidence can be collected.

No case is too weak to explore the possibility of a declaration of nullity. Let the officials be the experts who decide the merits of the case.

BASIC RIGHTS AND OBLIGATIONS OF THE PARTIES INVOLVED

The petitioner has the right to present his/her case and also the obligation to prove it. This means answering the proper questionnaire(s), supplying the necessary documents, and giving the names and addresses of the other party and witnesses as needed.

The respondent has also the right to present his/her side of the case. This is why the petitioner has the obligation to supply the respondent's last known address. With this information, the Tribunal can contact that person to invite his/her participation through a questionnaire or interview. The respondent may also appoint a qualified person as procurator to help explain the process or defend his/her rights. Unless all reasonable attempts are made to contact the respondent, the declaration of nullity itself would be null and void.

Should a declaration of nullity be granted, the other party may also be free to marry in the Church; therefore he/she has the right to be notified of the disposition of the case.

Church law requires only that the respondent be notified and invited to participate. It does not require his/her participation.

COST

The petitioner has the obligation to help defray the cost of processing the case. Tribunal fees differ depending on the type of case and amount of work involved, e.g. much less (\$35.00) for a lack of form case - a Catholic did not get married before a priest or deacon and two witnesses - and much more (\$475.00) for a case that must be sent to Rome. The fee for a formal declaration of nullity in the Archdiocese of Cincinnati is \$300.00, about one fifth of the actual cost of the case. In a number of cases, a psychological evaluation may be needed. The petitioner usually bears this cost.

The Church recognizes that some people have financial difficulties. The petitioner has the obligation to make these known to the pastoral minister. The pastoral minister will notify the Tribunal to make arrangements to meet the needs of those who truly cannot afford to pay a fee.

TIME REQUIRED

The process for a formal declaration of nullity often takes about eighteen months. The time will depend on the difficulty of the case and the current case load of the Tribunal. No date can be set for a Catholic Church wedding until a declaration of nullity is final.

HOW DOES ONE BEGIN?

To begin, the petitioner contacts the local Catholic parish. A priest or qualified pastoral minister will discuss the case and give specific directions.

At this meeting, it is important to present the basic facts of the situation including whether each of the spouses was ever baptized. Before the case is presented to the Tribunal, one needs the civil records of all the marriages and divorces/dissolutions involved. These are available from the courthouses where these public acts are recorded.

The pastoral minister - the procurator/advocate - will help determine precisely which type of case exists.

The procurator/advocate is the usual contact between the Tribunal and the petitioner.

FILLING OUT THE FORMAL PETITION

The petitioner submits a formal petition to the Tribunal stating a specific reason for the request and completes a questionnaire explaining the details. The questionnaire must include the necessary facts involved in this concrete marriage situation. The goal of the Tribunal is to understand what happened in each particular case. After reviewing the questionnaire, the procurator/advocate will help the petitioner write the formal petition.

The standard questionnaire for most declarations of nullity has 44 questions. The goal of the petitioner is to be specific, complete, and as honest as possible in answering each question. Simple “yes” and “no” answers are usually not helpful. Specific examples are helpful.

Answers should be complete and make sense to another person. Doing a rough draft first, then asking the procurator/advocate to review this draft to make sure it is clear and understandable, seems to work best. The final draft should be typed, printed, or written very legibly in dark ink because several officials will have to read it.

WITNESSES, PROFESSIONALS, AND DOCUMENTS

It is not enough for a person to think his or her marriage is invalid. The facts of the situation must be proven (Mt. 18:15-18; 1 Cor. 6:1-4). The facts presented in the responses are regarded as allegations (unproven statements of fact until proven). Church law requires that what the petitioner alleges be corroborated by documents or witnesses.

For this reason, the petitioner is required to submit the names, addresses, and telephone numbers of a reasonable number of witnesses (two or three minimum; usually six) who know the spouses and their relationship firsthand.

The facts of the wedding and civil divorce/dissolution are proven through the civil records submitted along with the petition.

If there was counselling with a doctor, psychiatrist, psychologist, social worker, priest, or other professional person, such reports require a release from professional secrecy signed by the petitioner and/or respondent.

PETITIONER ALERTS THE WITNESSES

Witnesses are needed. The Tribunal will contact them either by mail or through a pastoral minister. The petitioner must not suggest what witnesses say but should ask them to be truthful.

Because the questions take thought and time to answer, three months is normally allowed for responses. It is essential for the petitioner to ask the witnesses beforehand for their prompt cooperation.

SENDING DOCUMENTS TO THE TRIBUNAL

The procurator/advocate will review the petitioner's responses and send the case to the Tribunal.

WHO READS THE CASE?

All material relative to marriage cases is treated confidentially as required by Church law and respected by civil law. Only those who have a right to the information are permitted to read it. All officials of the Tribunal are bound by oath to keep the contents confidential. The petitioner and the respondent have the right to read what is said by each other and the non-professional witnesses, and they also have the obligation to keep this information confidential.

THE CASE GETS A PROTOCOL NUMBER

The first person to see any material sent is a secretary who takes care of the mail. She acts as a notary making the documents official stamping on them the date when they arrive at the Tribunal.

She assigns a protocol number for each case (for example, RE: SMITH + JONES, Num. Prot. 88/0999). Put that number on future correspondence to be sure that everything related to that case will be put together.

CASE DIRECTOR - AUDITOR

The case will be assigned to a case director called in Church law an auditor. This auditor takes care of guiding the case through its various steps.

THE FORMAL PETITION STATES A CANONICAL REASON

The judges and staff of the Tribunal presume that the petitioner has worked with a procurator/advocate and states in the formal petition a canonical reason for a declaration of nullity. This formal petition is the basis on which the Tribunal begins its investigation. It is sent to the respondent.

A judge or a panel of three judges and a defender of the bond will review the case to see if the nullity of the marriage is proven according to Church law.

These reviews are conducted on a first come, first served basis. The volume and the complexity of the individual case determines the amount of time needed for this process.

At the time of the initial reviews, the Tribunal notifies the procurator /advocate if further information is needed. The Tribunal may request additional witnesses, professional reports, or documents.

WEIGHING THE PROOFS

The presiding judge will invite the parties to review the gathered proofs at the Tribunal in the presence of an auditor after signing a review release promising to keep the contents of the proofs confidential and not to use that information in a civil court.

Unless a party requests that more information be gathered, the case is then moved to a decision.

CONCLUSION AND DECISIONS

The parties and the procurator/advocates are notified of the results of the decision.

Due to the seriousness of the matter, a declaration of nullity only becomes final when the case has received the two independent affirmative decisions required by Church law. Therefore, an affirmative decision will automatically be forwarded by law to the appeal court for the Archdiocese of Cincinnati: which is the Tribunal of the Archdiocese of Washington, D.C.

It usually takes three months between the first affirmative decision and the deci

sion of the appeal court. Difficult cases can take longer.

If a case receives a negative decision, the petitioner or the respondent may appeal that decision. The case could also be re-opened with significant new information.

FREEDOM TO MARRY

It is only after a second affirmative decision case that the parties are free to marry within the Catholic Church. That will be stated in the letter of notification to the petitioner and the letter to the respondent.

The letter of notification is an important document. It should be kept to prove a declaration of nullity has been given.

Freedom to marry is not automatic. Even though the marriage has been declared null, the petitioner or the respondent could be restricted from future marriage in the Church until some conditions are fulfilled to prevent another invalid marriage. The Catholic Church views marriage as permanent and sacred and may restrict a person's freedom to marry in the Church until the Tribunal or a local bishop is satisfied that a serious obstacle is removed.

The civil effects of the first union remain and must be fulfilled as far as humanly possible. For instance, a person who is under civil court order to pay child support from a first union must meet that obligation before undertaking new obligations.

OTHER QUESTIONS

This brochure has attempted to answer the most basic questions. There may be others. Please, discuss additional questions with a priest or procurator/advocate at a parish.