

Diocese of Austin
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A Guide for Those Involved in Marriage Nullity Trials

INTRODUCTION

From the beginning of creation, God declared: “It is not good that man should be alone. I will make a partner for him (Gen 2:18).” With these words, God established marriage as a holy institution for all people and for all time. Christ the Lord confirmed the sanctity of marriage and raised it to the dignity of a sacrament between the baptized. Moreover, our Lord added another dimension to marriage when he taught that this union between a man and a woman was indissoluble; that is, once a man and a woman agree to enter marriage, they cannot later agree to end it: “They are no longer two, but one flesh. Therefore, let no one divide what God has joined together (Mk 10:8-9).” Later, Saint Paul reiterated this solemn teaching: “To those who are already married, it is not I, but the Lord, who commands: a woman must not divorce her husband... and a man must not dismiss his wife (1 Cor 7:10-11).”

Until Death Do US Part

For 2000 years, the Catholic Church has held fast to this teaching of Jesus Christ. Once two people exchange consent to marry, the Church presumes that the marriage is valid. And as long as a person is considered to be in a valid marriage, he or she cannot marry again. This teaching, too, comes from Jesus: “Whoever divorces his wife and marries another person commits adultery” (Mk 10:11-12). In other words, a valid union between a man and a woman is a marriage that must last “until death do us part.”

However, there are some circumstances under which a marriage might not have been valid to begin with. When a man and a woman say “I do” at the altar, each is entering an agreement with the other person who also agrees to marriage. This is called exchanging consent. Two people give and accept each other in a union involving the whole of their lives, a partnership that is directed at the good of both spouses and the procreation and education of children.

Free and Informed Decision

Now, when two people exchange consent, they must be able to make a free and informed decision to do so. Moreover, they have to choose marriage as it was fundamentally intended by God the Creator. If either of these conditions is not met, a valid marriage cannot arise out of that exchange of consent. The principle is simple: If consent makes a marriage, when that consent is defective or lacking altogether, no valid marriage bond results. And if there is no marriage bond, the Church considers a person free to marry. This is precisely what the marriage nullity process seeks to determine: whether or not, based on specific reasons, a valid marriage bond arose when two people exchanged consent.

One thing must be clear: The marriage nullity process does not declare that a marriage once existed, but now is ended. In other words, a declaration of nullity is not a Catholic form of divorce. Rather, a declaration of nullity states that, insofar as an ecclesiastical court is able to determine, there was never a valid marriage bond to begin with.

To determine whether or not a marriage was invalid at the time of consent is a tremendously serious and weighty decision. Because of this, and since marriage itself is a public reality, the Church requires that the decision be made by an ecclesiastical court. Judges appointed by the bishop of a diocese are given authority by the Church to decide these matters. These judges direct the process by which information about the marriage is gathered and a decision is arrived at as to whether or not a marriage was invalid. This process is referred to as a marriage nullity trial.

Presumed Valid Until Proven Otherwise

There are two additional points to keep in mind. First, the Church always presumes that a marriage is valid. Proof to the contrary must be demonstrated during the process by the one who claims the marriage was invalid. Second, all parties in the nullity trial have rights and obligations (listed below). When all concerned make use of these rights, and fulfill the obligations, it assists considerably in bringing the process to a just and timely conclusion.

There is no doubt that the marriage nullity process can appear complex and confusing. Nevertheless, it is essential for those who wish to clarify their marital status in the eyes of the Catholic Church. This article is intended to make the process more understandable to those involved in it.

The Process: Step by Step

1. Starting a Case: The Petition
2. Acceptance of the Petition
3. Constitution of a Court
4. Choosing the Grounds of Nullity
5. Collection of Evidence
6. Publication of the Evidence
7. Conclusion of the Case and Final Defense
8. Judgment and its Publication
9. Challenging the Sentence/Appeal
10. Warnings and Prohibitions

THE ANNULMENT PROCESS

Introduction

The institution of marriage, by which a man and a woman become one in a partnership of the whole of life, was established by God. Moreover, the marriage covenant between two baptized persons has been raised by Christ the Lord to the dignity of a sacrament. So sacred is the bond of marriage, that Christ Himself declared that what God has joined together no one is to divide. When a man and a woman exchange consent to marry, when they say "I do," they agree to enter that perpetual and ever faithful bond of marriage which is directed to their own well being, and to the procreation and education of children.

Sadly, however, the life of a marriage can be a fragile thing. Divorce has become one of the familiar tragedies of our day. Many marriages are not successful in spite of good intentions of the spouses. This is true even when a family has been established, and the marriage has lasted for many years. The Church attempts always to be as sensitive and understanding as possible to the stress and pain that all this brings to people. The Office of the Tribunal of the Diocese of Austin exists largely to help all those who are divorced (and with a possible remarriage) who now seek a clarification of their status in the Church.

Once a marriage is entered into between any two persons, Catholic, Protestant, or non-Christian, it is presumed to be a valid and binding union until the contrary can be proven. And as long as a person is bound to a previous valid marriage, the Church does not permit a second marriage to take place. The Church has established certain procedures by which persons can attempt to prove that a previous marriage was not valid or binding, thereby assuring that they are free to marry according to the rites of the Church. This usually involves those persons who seek to marry in the Church, but have been previously married. However, others too may need the assistance of the Tribunal. For example, divorced Catholics may want to settle the status of a previous marriage that ended in divorce even though they have no immediate plans to remarry.

There are many misconceptions about what a declaration of nullity in the Catholic Church actually is. The following information is an attempt to answer the most frequently asked questions about annulments.

1. What is a Declaration of Nullity (annulment)?

A declaration of nullity states that, according to Church law, a given marriage was not valid (and therefore not binding) at the time a couple spoke their marriage vows. A person asks this Office to look at a previous marriage which has ended in divorce, and, if possible, to issue a declaration that this previous marriage no longer binds either party to the union. In no way should this process be thought of as a type of "Catholic Divorce." A declaration of nullity states that a marriage was invalid from the beginning. A

civil divorce, on the other hand, asserts that a marriage, valid or not, is dissolved. The Catholic Church does not grant divorces.

Neither is an annulment a statement that a marriage never existed civilly. Rather, it is a determination that certain conditions were present at the time the marriage was entered that made it an invalid union according to Catholic Church teaching. The civil effects and recognition of that marriage remain intact and unchanged.

Moreover, an annulment is not a statement that the marriage was entered into in bad faith by either of the parties. It is not a statement of who caused the marriage to fail or who was most guilty for its failure. Those are certainly important questions for a person to ask. But they are not the questions a Tribunal must answer.

The annulment process, in its most simple form, involves any person coming to the Church and asking to be heard. Information is gathered by us and in the end, we answer that person's request: the marriage was invalid or valid according to the laws of the Church.

2. Does an annulment have anything to do with civil law?

No. In the United States, a declaration that a marriage was invalid from the start has no effect before the laws of any state. It does not affect anything that is determined by civil law such as alimony, child custody, visitation rights, division of property, legitimacy of the children, etc. It pertains only to the internal governance of the Catholic Church.

3. Does an annulment affect the legitimacy of children?

No. The legitimacy of children is determined by the laws of the states. Just as a divorce does not make children illegitimate, neither does an annulment granted by the Church. The laws of the Church state that children born of a supposedly valid union are legitimate children. Therefore, if the marriage is later shown to have been invalid, the status of the children remains unchanged: they are legitimate.

4. Who can apply for an annulment?

Almost always, a person seeking an annulment is someone who has been married, is now divorced and wishes to marry again, specifically in the Catholic Church.

Divorced people, no matter what their religious affiliation, have a carefully-protected right in this Church to ask the Church to determine whether or not their previous marriage was valid. If they are not of the Catholic faith, they seek this generally because they wish to remarry, and the intended spouse is a Catholic who wants the marriage to be recognized by the Catholic Church. We respect the vows of marriage of all people, no matter what their religious affiliation is. Members of the Catholic Church, however, are bound to have their marriage recognized by the Church. This is why members of

other churches must often go through an annulment process before they can marry someone in the Catholic Church.

5. How is an annulment process started?

The annulment process begins at the parish level. Usually, an appointment is scheduled with a priest or deacon who will more often than not act on your behalf as an advisor or Advocate. You will be given the appropriate packet of information. You will be asked to give a narrative of your growing up years, the courtship, the marriage, and the problems that existed. It is nothing more than telling your "story". If you are not of the Catholic faith, you should begin the process in the parish of your intended spouse.

6. Will my former spouse be contacted?

Yes. We are required by Church law to let your former spouse know that the process has begun and to offer him or her the opportunity to make a response. Your former spouse will be sent a letter explaining the process that was initiated.

It is very helpful to have the participation of the former spouse. However, we obviously cannot require the former spouse to take part in the process. Your former spouse does not have to agree to the annulment. Nor does the former spouse have to agree to participate. But we must let the former spouse know the process has begun and what the eventual result of it is.

Sometimes, it happens that the current address of the former spouse is not known. In such a situation, the address of a parent will suffice if the marriage in question took place in the territory of the Austin Diocese. When the marriage did not take place in this territory it is imperative a current address is sought for the former spouse. There are several places on the Internet that might help you find a recent address. For example, one helpful site is <http://www.locateme.com>. If the former spouse's address cannot be found, and if the marriage took place outside of the Diocese of Austin, the case will have to be submitted to the Diocese where the marriage did take place. This information applies to Catholics and non-Catholics alike.

7. What documents are needed?

The following documents are required to begin a case.

- Copies of the baptismal certificates of all Catholic parties involved.

- A copy of the civil marriage license.

- A copy of the church marriage certificate (if applicable)

- A copy of the divorce decree certified or signed by the Judge.

- The documents will be returned to you upon request.

8. How is a case submitted to the Tribunal?

Once you have completed the packet received at the parish level, and gathered all the necessary documents, you will need to arrange a second appointment with the priest or deacon who assisted you. He will review the packet to make sure everything is in order. If it is complete, he will then forward it to the Tribunal.

9. What happens next?

When we receive your case, it will be carefully reviewed to determine if there is any basis for accepting and proceeding with the matter. If your petition is accepted, you will be notified by letter of general information pertaining to the start of your case. You will then be given a case number that will be used in any correspondence concerning your case.

At the same time, your former spouse is contacted and invited to participate in the case. The witnesses you submitted in your Petition will also be sent questionnaires. It is important for you to contact your witnesses to assure a prompt reply. This can be a tremendous help in making sure your case is not delayed.

10. Who can be witnesses?

You are asked to contact four people who might express a willingness to help with your case. These should be people who know something about the marriage in question, especially the period right before and right after your wedding. These people usually are friends or family members. Generally, the children of the marriage are not to be witnesses. You should tell all the witnesses that they have your permission to speak freely. Of course, it is essential that we have correct addresses on each one. It can also be tremendously helpful if they are willing to offer us their telephone number in case we have a couple of questions that can help clarify certain facts about the case.

11. Is other information needed?

Sometimes more information may be needed from you, and in such cases, you will be asked to come to the Tribunal office for a simple one-on-one interview. In more complicated cases, a psychological opinion will be sought from a professional who assists the Tribunal. Rarely is your participation required when a psychological opinion is sought by the Tribunal.

12. When is a decision reached?

After all of the information is gathered, a judge or panel of judges will write the decision. They will decide whether or not the marriage was indeed invalid from the start. Another person who is known as the Defender of the Bond also participates. The Defender of the Bond represents the marriage itself, speaking in favor of all the facts that support the validity of the marriage. After the judge reaches a decision, both you and your

former will be notified of the decision (unless the former spouse does not wish to be notified). If either of you disagrees with it, there is a process of appeal available to you. The decision can be appealed either to the Appellate Court for the State of Texas or to the Roman Rota.

13. When does the decision become final?

When and if both the Diocese of Austin and the Appellate Court in San Antonio give affirmative decisions (meaning that the marriage in question was invalid), both you and your former spouse will be free to enter into a new marriage in the Catholic Church (unless other marriage cases are pending). At this point the decision of the case is final.

14. Does the Tribunal ever deny an annulment?

Yes. Some cases are given a negative decision; that is, the judge decides that the marriage was a valid and binding union. If this should happen, you will be notified of that decision by the Tribunal. You would then have the option of appealing the decision to either the Appellate Court in San Antonio or the Roman Rota. The Roman Rota is the Supreme Court of the Church for marriage cases (among other things).

15. When can I set a wedding date?

A wedding date should never be set in stone until the declaration of nullity has been received. The reason for this is that one is never sure of the outcome of a case until it receives two affirmative decisions: usually from the Austin Tribunal and the Appellate Court. If the Austin Tribunal grants an affirmative decision, the Appellate Court may overturn that decision. Or the former spouse may decide to appeal the Austin decision to a higher court.

In certain circumstances, depending on the pastor you are in contact with, you may begin marriage preparation in hopes of eventually entering a new marriage. However, since the outcome is never certain, no firm dates should be set, no invitations ordered, etc., until the declaration of nullity has been received and confirmed.

16. How long does it take to complete the process of annulment?

There is simply no way to promise that your case will be completed within a certain period of time or that the outcome will be in your favor. However, the general norm is that it takes approximately one year. The time frame for a declaration of nullity depends on many factors. For instance, witnesses may delay sending in their testimony for several weeks. Or a personal interview with one of the parties to the marriage may be required.

17. How much does the annulment procedure cost?

An ordinary annulment is \$310 with \$110 being due at the time the case is submitted. The remainder can be paid off in monthly payments. The Tribunal is heavily subsidized by the Diocese of Austin. There are many expenses involved in the process and to help defray these expenses you are asked to pay part of the actual costs involved. If a judge determines that a psychological assessment is needed in a case, there will be an additional charge of \$90.

We will not impose any financial hardship on anyone. If you cannot pay the full amount, please let us know. There is a procedure form in the packet explaining what to do in cases of hardship. No case will be turned down due to a person's inability to pay the fee! Your case will be heard just like any other, and in the same amount of time. Money will never influence the work of justice.

18. What if I have other questions?

Your normal contact person throughout the annulment process will be your advisor or advocate. This is the parish priest, deacon, or lay person who you will first meet with. However, you should know that the Tribunal working with the parish priest or deacon, is more than willing to assist you during this delicate process in whatever way we can.¹

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