

## THE CHURCH AND MARRIAGE

The Catholic Church teaches that marriage is a permanent and exclusive relationship between a man and a woman in which they give and receive mutual help and love, and from their union bring forth and educate children. They create together an intimate partnership of the whole of life. Therefore, marriage is more than a legal contract, it is a sacred bond in which a man and a woman totally commit themselves to the good of each other. Thus, the Catholic Church respects the bond of all marriages regardless of a person's religious beliefs.

The Church also teaches from Scriptures, as well as time-honored tradition extending into the present, that when a baptized man and woman enter a valid marriage, it is also a sacrament. Except in rare circumstances, the sacrament of marriage cannot be dissolved.

## HOW THEN IS A DECLARATION OF NULLITY POSSIBLE?

People rarely enter into marriage with any intention to divorce. Rather, they find that the living out of marriage is radically different than they had anticipated. When the conflicts are serious or beyond repair, the couple divorces.

There are many reasons why a marriage may lack one or more of the basic elements of a canonically valid marriage.

For Catholics, the form of the marriage ceremony must be according to the law of the Catholic Church.

Each of the parties must be free of any impediments to marriage.

Each of the parties must adequately understand the essential obligations of marriage and have the psychological strength to assume those obligations.

The Church procedure for a declaration of nullity does not focus on the fact of the legal marriage or that the couple divorced. It asks the question, "What was the quality of this relationship?" If the lived experience of the marriage was so deficient that it did not correspond to the commitments made on the wedding day, and this is clearly proven to the Tribunal, the Church issues an ecclesiastical declaration of nullity.

The Church recognizes the authority of the civil courts to terminate the

legal contract of marriage, divide common property and assign child support payments. The marriage vows, by their very nature, cannot be broken by any civil power and properly belong to the ministry of the Church.

## HOW DOES THE TRIBUNAL DETERMINE IF A MARRIAGE IS INVALID?

The guidelines used by the Tribunal are the gospel teachings of Jesus Christ and the law of the Catholic Church. Marriage is never a private affair. It is recognized by society. It has legal existence before the Church and the State. For Catholics, marriage in the Church is a celebration of the sacrament in the presence of the Church's minister and the Church community. Therefore, Church law requires more than the word of the person seeking the Church declaration of nullity. The former spouse has a right to participate in this process, and his/her cooperation is always invited, as is that of other witnesses -- persons who knew the spouses during their courtship and marriage. Marriage counselors and other professionals may also act as witnesses; but when they do so, they require a release signed by the person about whom they are giving information. Witnesses are much more likely to participate if their cooperation has been secured beforehand, so the party submitting the witnesses' names should notify them that they will be contacted by the Tribunal. The Tribunal contacts witnesses by mail, using questionnaires. In this Tribunal, the testimony of all witnesses is kept confidential.

## HOW DOES ONE SUBMIT A PETITION FOR A DECLARATION OF NULLITY?

Following a civil divorce, either spouse can submit a petition for an ecclesiastical declaration of nullity of the marriage. That person should contact a priest or pastoral minister regarding this petition. The pastoral minister, making use of a questionnaire provided by the Tribunal, will help the individual seeking the declaration of nullity to compose a detailed account of the marriage from its very beginnings. This statement includes information regarding the history of the courtship and marriage, as well as the personality of the parties. The Petitioner is asked to sign this petition with the priest or pastoral minister who is usually named to act as Procurator to serve as his/her representative, and to support the petition. The Petitioner is asked to photocopy and retain a copy of all documents submitted to the Tribunal, including the answers to the Preliminary Questionnaire. Certified copies of the marriage and

divorce (dissolution) records, and sometimes other pertinent documents, are submitted with the petition. If this presents any problems, the Procurator should notify the Tribunal, and a member of the Staff will assist.

## WHAT IS THE FIRST STEP ONCE THE PETITION IS SUBMITTED TO THE TRIBUNAL?

An initial evaluation is made of each petition submitted. According to Church Law, the Tribunal of the Archeparchy of Philadelphia can hear only those cases which meet one of the following criteria:

1. if the marriage in question took place within the Archeparchy of Philadelphia;
2. if the former spouse of the Petitioner presently lives in the Archeparchy of Philadelphia;
3. if the Petitioner lives in the Archeparchy of Philadelphia and the judicial vicar of the diocese where the other party lives grants permission;
4. if the majority of the witnesses who are to be contacted reside in the Archeparchy of Philadelphia.

Every effort will be made to assist anyone in submitting a petition for declaration of nullity through the proper channels. Once it has been determined that the Tribunal in Cleveland which acts on behalf of the Archeparchy of Philadelphia is able to accept a petition for a declaration of nullity, an assessment will be made as to whether there are grounds for nullity and whether such grounds can be substantiated by adequate proof.

If there are no grounds for a declaration of nullity or if there is no reasonable hope that the alleged grounds can be proven, the petitioner cannot be accepted. The petitioner would be notified of this action directly, or through the procurator, with reasons for the dismissal.

If there appear to be some grounds and reasonable hope for proof, the process continues with the gathering of information from the various sources, as described above.

## WHAT ABOUT THE FORMER SPOUSE?

As indicated above, Church Law recognizes the right of the former spouse to make a statement regarding the marriage and the right to introduce any witnesses he/she chooses. Therefore, the former spouse will be contacted by the Tribunal and offered the opportunity to reply.

It is important, therefore, for the

Tribunal to have a current and complete address of the former spouse. If this is not available, the Tribunal must have his/her last known address together with the name and address of a family member through whom the other party may be contacted.

Accordingly, the Tribunal will contact the former spouse. It has been the experience of the Tribunal that in the majority of cases the former spouse is cooperative. The former spouse is allowed a specified time in which to reply.

## WHO REVIEWS THIS INFORMATION?

All material relative to the declaration of nullity process 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. The testimony of witnesses is not revealed to anyone. However, the former spouse does have a right to respond to the allegations of the Petitioner; and the Petitioner has a right to know what the other party says as well. All officials of the Tribunal, including office personnel, are bound by oath to keep the contents confidential.

## DO YOU HAVE TO APPEAR PERSONALLY AT THE TRIBUNAL?

At times the Petitioner may be requested to appear personally at the Tribunal. This interview is private, but the Procurator is welcome to accompany the Petitioner to the Tribunal office.

If the former spouse chooses to participate in this process, he/she can submit a written statement regarding the marriage or appear for a personal interview. This would be at a different time from the Petitioner's appointment.

## WHEN IS A DECISION MADE?

When enough information has been gathered to move the Tribunal to formally accept the petition, a member of the Tribunal staff is named as Defender of the Bond to argue the validity of the marriage, if appropriate, and to guarantee the rights of both parties and the Church. The advocates of both parties are given the opportunity to study the available evidence and offer their observations on the case. A judge is assigned to formally hear the case. In more complex and difficult cases, a panel of three judges is appointed. The

parties may also request a three-judge panel.

After a thorough study of all the material, the judge will render a decision. A decision may be affirmative or negative. An affirmative decision means that the marriage has been declared invalid. A negative decision means that the invalidity of the marriage has not been established beyond a reasonable doubt; therefore, the marriage still binds in the eyes of the Church.

If a marriage is declared invalid due to a specific cause, a second marriage obviously cannot be permitted until it has been demonstrated that the cause which invalidated the first marriage has been removed.

Please note that the right to remarry in the Catholic Church can in no way be guaranteed before the completion of the entire process of study and formal hearings. No plans for future marriages should be made before that time. The Tribunal cannot be responsible for arbitrary promises or guarantees made by any priest, religious or lay person.

#### WHAT ABOUT DECLARATIONS OF NULLITY AND THE LEGITIMACY OF CHILDREN?

As was indicated above, there are no civil effects to a Church declaration of nullity in the United States. It does not affect in any manner the legitimacy of children. It cannot be used to question a child's paternity. It cannot be used to influence a civil court to set or change terms of civil divorce, child custody, support or property settlement.

Children born to a couple whose marital union is subsequently proven defective are innocent parties to this situation. Church law has always protected their legitimacy because they were born into a presumed valid marital relationship.

#### HOW LONG DOES THE PROCESS TAKE?

It is impossible to predict the length of time because of a number of variable factors. No two cases are the same. One case may be completed in several months. Another may take a year or longer. Generally, cases can be completed within one year. This is not a guarantee. No date for remarriage in the Church may be set until an affirmative decision has been rendered and ratified. The Tribunal will process each case as efficiently as possible.

#### WHEN SHOULD THE TRIBUNAL BE CONTACTED?

The Tribunal should be notified if either of the parties changes their

#### APPEAL OR MANDATORY REVIEW

Church Law recognizes the right to appeal. Therefore, the Petitioner has the right to appeal a negative decision. Moreover, the Respondent and the Defender of the Bond have the right to appeal an affirmative decision. When an appeal of this nature is made, the case is referred to the Tribunal of the Archdiocese of Philadelphia.

When a personal appeal is not made, Church Law requires an appeal. What address or telephone number, if there is new evidence to support the petition, or if names of additional witnesses are to be submitted.

#### WHEN SHOULD THE TRIBUNAL NOT BE CONTACTED?

The parties are asked not to call with a question on the progress of the petition. Rather than hurrying the process, requests for the "status" of a case slows down the process. A staff member must take time away from his or her work to respond to your call or letter. The Tribunal makes every attempt to process each petition as quickly as possible. Periodically, a letter will be sent to the parties to inform them of the present status of the petition.

#### IS THERE A FEE FOR TRIBUNAL SERVICE?

The Marriage Tribunal is subsidized by the faithful of the Archeparchy most of whom never require its services. The Tribunal, which is staffed by both professional and secretarial personnel, handles about 20 formal cases a year. To help lower the amount of the subsidy, the standard fee assessed as Court Costs in 2007 is \$300. This fee is the responsibility of the Petitioner.

The manner of paying the fee may differ according to one's means. The Petitioner may choose to pay the whole fee when submitting the case. Or, he/she may choose to enclose a non-refundable deposit of \$50 when the petition is submitted after which he/she would be billed quarterly. In cases where a psychological assessment is required, it is necessary to ask the party being evaluated to meet the consultant's fees.

Please note, however, that if for any reason one cannot afford to pay all or part of the fee, a simple explanation to the Tribunal will insure that your case may be processed at a reduced charge or no charge at all. At no time should financial considerations discourage or stop any person from exercising the right to receive a just hearing from the Church. One's ability to meet the established fee in no way

this means is that all declaration of nullity cases must follow an additional step in procedure. Every declaration of nullity decision which is given must be reviewed by an Appellate Court / Tribunal. A new panel of three judges can either ratify the first decision or admit the case to a process of gathering additional information. Their decision after such a process can either be affirmative or negative.

#### IS REMARRIAGE IN THE CATHOLIC CHURCH ALLOWED?

affects the progress or outcome of a request.

When a marriage is declared invalid and confirmed with a ratification or a second favorable decision in the Appellate Court / Tribunal, if there are no restrictions attached to it, the usual procedure of preparing for marriage in the Catholic Church may be started with the local parish priest or pastoral minister.

IF YOU HAVE ANY FURTHER QUESTIONS YOU ARE WELCOME TO CONTACT THIS OFFICE.

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Procedure  
in  
Marriage Nullity  
Cases