



The purpose of this pamphlet is to explain the process by which the Roman Catholic Church decides a declaration of nullity, or what is commonly referred to as an annulment concerning a marriage. This information is meant to be helpful to both spouses, including the one who has not asked for the review of the marriage, but still wishes to understand the process. This information is also meant for pastors and others in pastoral ministry positions.

What is a Declaration of Nullity?

A declaration of nullity by the church, or as it is more commonly called, an annulment, is an acknowledgment that a particular couple never achieved a full marriage commitment. This does not mean that the marriage in question with civil and external implications never existed. The marriage nullity process is a Church examination of a marriage that has civilly ended in order to determine if the marriage was null due to a defect of consent at the time of the exchange of vows. This examination is accomplished through the participation of parties and witnesses in a procedure established in canon law, the law of the Church.

Declaration of Nullity Process

There are two types of nullity processes, the Ordinary Process and the Briefer Process. The difference between the processes is the length of time and procedural method. The majority of the cases will be completed through the Ordinary Process. See the Ordinary Process FAQ's found on:

<http://www.archmil.org/ArchMil/Resources/TRIB/FAQordinaryprocess4-14-16.pdf>

Other cases that meet specific requirements can be decided in the Briefer Process. These requirements are as follows:

1. Both spouses must consent by signature, to the process, after they have both seen the application/petition.
2. The facts surrounding the case must be obvious according to the marriage law of the Church. This will be determined by the Judicial Vicar after he reviews the application.
3. All the facts that support the criteria of nullity (proofs) such as documents and the testimony of parties and witnesses must be readily accessible and available.

Even with this, the time necessary will vary from case to case. Once collected, the acts of the Briefer Process case are submitted to the Archbishop for a decision.

See Briefer Process FAQ's found on:

<http://www.archmil.org/ArchMil/Resources/TRIB/BrieferFAQsBP6-14-16.pdf>

Who would need a Declaration of Nullity of their marriage?

Any person, (Catholic, Protestant, Christian, or non-Christian), who wishes to enter marriage in the Catholic Church, and who has a previous living spouse, needs a declaration from a Catholic tribunal regarding the status of all previous marriages.

The Catholic Church's doctrine of faith does not recognize divorce as ending the commitment entailed in marriage vows, believing that marriage is binding until death. While the presumption always exists that a marriage is valid, either of the spouses has the right to ask the church to reexamine this presumption after common life has ceased and a civil divorce has been granted. The fact that a couple may have been married by a Catholic priest does not necessarily guarantee that all the requirements were present for a full and valid union.

What is a Church Tribunal?

Church law (canon law) requires every diocese in the Catholic Church to have a tribunal. The tribunal is an office within the diocese that handles judicial matters, specifically the application of canon law and the protection of rights. One of the tribunal's primary duties is to examine a marriage at the request of either of the parties to decide if a valid bond was present at the time of consent.

What is the status of a divorced Catholic in the Church?

Catholics who are divorced but who have not entered another civil marriage are encouraged to practice their faith fully, including participating in the sacraments. Merely being separated or divorced does not change one's status in the church. Divorced Catholics are full members of the church with all of the same rights as any other member. Catholics who are divorced and who have remarried, without a declaration of nullity, are not free to receive the sacraments, but are encouraged to practice the other aspects of their faith, pending a decision by the tribunal regarding their former marriage.

How does marriage as a sacrament differ from marriage as a legal contract?

Civil law focuses on the couple's lawful entrance into marriage. The validity of a marriage bond in civil terms is based on observance of state law. An official decree of civil divorce ends civil recognition of a marriage. The church process that declares a marriage null has no effect whatsoever on legitimacy of children, child support or alimony judgments, nor on property divisions made by a civil court.

The law of the church focuses largely on the spiritual and psychological commitment brought to the marriage. Marriage in the Christian context requires more than just a

wedding ceremony. The church looks for a translation of the vows into a daily reality. A wedding always has the potential to become a marriage. The spouses must have the intention and the capacity to carry the marriage beyond the wedding day. They need to understand the duties of marriage and be able to carry out these duties. This union is only in its beginning stages at the time the wedding is celebrated.

How does the Catholic Church view marriages of non-Catholics?

The use of the term “declaration of nullity” is limited to internal procedures within the Catholic Church. The Catholic Church is unable to validate a new marriage for a person until all previous marriages have been examined and all former bonds have been found to be null. The Catholic Church presumes the validity of all marriages and believes that marriage between any two baptized people is a sacrament. When any person, Catholic or non-Catholic, wishes to marry a Catholic and has been previously married, each prior marriage must be examined and a judgment rendered by a church tribunal.

Religious decisions regarding marriages by Jewish, Anglican, Episcopal or Orthodox authorities do not enjoy legal recognition by the Catholic Church. Parties having received a decision from the relevant authority of another faith will still need to resolve their previous marriage through the Catholic tribunal. The church considers the marriages of non-Catholics to be equal in validity with those of Catholics.

How do I know if I should petition the Church for a Declaration of Nullity?

Before accepting a case, the tribunal will ask for a guarantee that all hope of reconciliation has been exhausted. For this reason, the tribunal will not act on a case until after a civil divorce has been granted. Some people petition the church soon after divorce, others wait for a significant period of time. The most frequent reason for a petition is the desire for remarriage. In other cases, Catholics have married outside the church and now want to have the church validate the new marriage. Still others are looking to return to the sacraments of the Church.

For the necessary human and spiritual renewal, the Archdiocese of Milwaukee has a ministry to the separated and divorced with meeting sites based at parishes throughout our ten county region. For more information please contact the Archdiocese of Milwaukee at 414-769-3300.

Who can apply for a Declaration of Nullity?

Either spouse has the right to apply for a church review of their marriage. Application must be made to a tribunal which has the proper jurisdiction. This is (a) the tribunal in the diocese where the wedding took place, (b) the tribunal in the diocese where either spouse lives, or (c) the tribunal in the diocese where the supporting evidence can be best obtained.

Those petitioning the tribunal generally fall into four categories: 1) Catholics seeking to resolve the validity of a former marriage, 2) Catholics desiring remarriage after a divorce, 3) divorced and remarried Catholics wishing the church to validate their current civil marriage, 4) Non-Catholics wishing to enter a new marriage with a Catholic when there has been a previous marriage.

Upon the filing of a petition, the church is obligated to apply the provisions of canon law and render a judgment at the end of the process. Once a petition has been filed, the process does not cease unless the petitioner decides to abandon the case, or the judge orders suspension for lack of substantiating evidence. Please note that if a petitioner decides to abandon a case, the respondent can request that it be continued.

What are the grounds for a Declaration of Nullity?

The following represent some of the symptoms or characteristics of a problematic marriage, any of which can pose a possible case for declaration of nullity:

- Broken marriages of the very young
- Marriages of short duration
- Consistent violent behavior
- Enduring alcoholism or drug dependency
- Sexual behavior(s) incompatible with marriage/use of pornography
- Criminal orientation
- Serious immaturity
- Serious mental illness
- Rejection of procreation and education of children
- Contrary views about the permanence of marriage
- Consistent infidelity
- Pre-marital pregnancy

How is the process for a Declaration of Nullity started?

The petitioning spouse may approach his/her parish priest, deacon, or parish pastoral minister or approach the tribunal directly to obtain a petition form which is used to start the process. The form is also online at:

<http://www.archmil.org/ArchMil/Resources/AnnulmentApplication.pdf>

This form asks for biographical data on the spouses and for a history of the courtship, marriage and break-up. The completed petition, with all necessary documents (i.e. marriage license and divorce decree), is then forwarded to the tribunal. The tribunal will contact the petitioner by mail if the case can be accepted for formal consideration.

Once the petition is received, the tribunal may assist in gathering other background documentation during the next several weeks. This consists of prenuptial forms and baptismal records from Catholic churches. In some exceptional cases the tribunal will assist in the gathering of civil marriage records, and the divorce decree. A

procurator/advocate (representative) is assigned to act on the petitioner's behalf in order to keep the case moving as smoothly as possible.

Will my former civil spouse be contacted?

The tribunal does inform the other spouse, the "respondent," that the review has been initiated and offers that person the opportunity to participate. This is required by canon law. A letter is sent to the respondent asking him or her to come to the tribunal and give a statement, or to submit a written statement. If the respondent declines to cooperate, the tribunal is not bound to wait indefinitely for a response before judging the case. A reasonable time is given the former civil spouse to reply.

Can my former civil spouse contest the Declaration of Nullity?

The former civil spouse is sent a letter informing them of their rights in the nullity process as well as a basic summary of the issues alleged to indicate nullity. The tribunal prefers to gather the testimony of both spouses. The respondent may also lodge any objections in writing at the time of the citation. These objections are taken seriously. An objection by the respondent does not automatically end the judicial process. This objection is considered along with all of the other evidence by the judge/s in the case.

The church review does not wish to place the spouses in the position of adversaries, trying to place fault or blame. Both spouses have equal rights and equal standing in this legal procedure to offer their testimony, to name witnesses, to offer other evidence, and to have a procurator/advocate represent them in the proceedings. The petitioner has no advantage merely by being the petitioner, especially if the respondent takes advantage of his/her right to give testimony.

Sometimes, one spouse attempts to turn the trial into a continuation of the arguments in the divorce. This is not what the church's legal procedures are about. The respondent may incorrectly see a petition as his/her spouse asking the church to assign blame or condemn them for their actions in the marriage. The respondent may not understand how the church can allow the so-called "guilty" person to file for a declaration of nullity and will tend to see the granting of a declaration of nullity as condoning the sinful actions of that spouse. This is not the case. The spouses to a marriage are not judged, only the marriage bond itself is being judged.

Sometimes a respondent joins the petitioner in seeking an affirmative ruling. Other respondents are indifferent to the outcome. Tribunal officials are sensitive to the feelings of the respondent while encouraging that spouse to actively participate in the proceedings. An attempt is made to answer all of the respondent's questions in a manner that assures the respondent that he/she is not a target of this process, but an equal participant.

What is a procurator-advocate?

The procurator/advocate's role is both to act on behalf of the party he/she is representing, and to assist the church in finding the truth. The procurator/advocate is available to answer any questions that may arise, solicit further evidence to assist in the trial, and represent the interests of his/her client in the proceedings. Procurator/advocates are usually tribunal personnel that are appointed by the judge, however they may be persons who are trained in canon law or an interested parish priest or deacon. In all cases, the procurator/advocate must be approved. Once all the evidence for the case is gathered, the procurator/advocate composes a brief argument in the party's interest and submits it to the judge.

What is meant by evidence?

The result of a procedure seeking a declaration of nullity rests on the testimony of the spouses, on witnesses who knew of their relationship and on other proofs gathered. The petitioner will be asked to supply at least three such witnesses. These are family, friends, or acquaintances who have valuable information about the parties prior to marriage, the marriage itself, and who can identify the chief problem areas in that marriage. It is expected that the party producing the witnesses will have secured their cooperation beforehand. The respondent can also offer witnesses and other evidence. These witnesses are essential for the kind of objective evaluation of the marriage relationship that canon law demands. The best witnesses are those who can provide facts regarding the onset of problems in the relationship. If the information they provide proves insufficient, the tribunal will have to request additional witnesses.

Witnesses are required in cases before the tribunal, and a case is unable to proceed without them. Witnesses are not cross-examined in order to obtain facts. They are asked to fill out a written questionnaire detailing their knowledge of the marriage and the spouses. Questions are asked about specific events in the courtship and marriage, and for the witnesses' opinion about the relationship. Any other information that might be helpful in proving a case, such as statements of therapists, counselors, or other professionals consulted during the marriage, can also be offered.

What happens in a deposition?

The deposition is the only part of the process that requires a visit to our main offices. The remainder of the process may be conducted by mail or telephone. The deposition is really simply an interview. Contrary to popular belief, this is not done in a courtroom setting before a panel of priests. The petitioner meets with a member of the tribunal staff at the main offices. This deposition generally takes two hours. The petitioner is asked a series of questions about each of the spouses, the history of the courtship and the marriage.

There is no effort made to cross-examine the petitioner, nor is this a confessional. This is simply an effort to gather information crucial to judging a case. The respondent is also encouraged to come separately and give a deposition.

Who is the Defender of the Bond?

The defender of the bond represents church interests in the matter. This official, with a degree in canon law and appointed by the Archbishop, is charged with the task of arguing for the validity of the marriage if the facts warrant this. The defender of the bond assures that everything undertaken satisfies the requirements of canon law, especially that both parties to the case have been afforded their full rights. The defender of the bond has the power to appeal an affirmative decision in any case.

Who is the judge in these cases?

Ecclesiastical judges are qualified by degree, practice in canon law, and are appointed by the Archbishop. The judges have the final decision whether a declaration of nullity is granted or not. The judges' decision is based on the evidence gathered plus the observations of the procurator-advocate and the defender of the bond.

How does the Tribunal handle the information it obtains in a case?

We recognize the delicate and personal nature of the information gathered in this judicial process. As such, we do not share this information with anyone not directly involved in processing the case. However, canon law guarantees the right of each party to know the other parties' contentions as well as useful witness testimony. This right is observed by allowing parties and/or their procurator/advocates, a controlled opportunity to review evidence from the case and the decision. If there are unique circumstances in a case which warrant restrictions on access to certain information, either party may ask the judge to consider sealing certain testimony for the protection of the process or of the people participating. The defender of the bond and the procurator-advocate(s) will do all they can to ensure that no party is defamed during the process.

In certain cases, the judge may seek the opinion of a qualified psychological, medical or cultural expert. These experts are held to the same strict standards of confidentiality as any other member of the tribunal staff. Such experts do not decide the outcome of the case, but do express an opinion about the relationship based on their psychological, medical or cultural expertise.

How does the Tribunal arrive at its decision?

The judge asks for a deposition from the petitioner and possibly from the former civil spouse, the respondent. Statements are taken separately from each, under oath and for the record. Then the testimony of witnesses and other supporting evidence is gathered. In all cases both parties can offer additional information in writing until a decree of conclusion is issued.

When the evidence gathered is judged sufficient, the procurator-advocates draw up their briefs, summarizing the evidence and recommending a decision. The defender of the bond draws up a similar document making sure everything in the trial complies with the

dictates of canon law and making all reasonable arguments for the validity of the marriage. In certain cases the judge may consult an expert for an authoritative opinion on the relationship. The judge studies the case, the briefs filed and writes a decision. The decision is based on canon law and the facts of the case. A sentence is composed, which is a document of some length, explaining the decision and how this decision is in keeping with canon law and the testimony and evidence at hand.

Can one spouse receive a Declaration of Nullity and the other spouse be denied one?

An affirmative decision grants freedom from the bond of marriage to both parties. A negative decision holds both parties bound to the marriage. A declaration of nullity should not be seen as stamp of approval for particular behaviors in a marriage. Nor should it be seen as a blessing of either spouse. The validity of a marriage bond stands separate from any other issue. The tribunal is charged exclusively with examining whether the parties gave full and unqualified consent to the marriage and whether they had the human power to carry out what they vowed. A marriage is declared null because the substance of commitment in marriage was flawed or was impossible. A declaration of nullity should not be interpreted as an award granted to either party, but rather a factual determination about the bond of marriage.

How long does the process take to obtain a Declaration of Nullity?

Due to the great number of cases considered and the requirements of canon law, an exact time cannot be specified. Usually, for an uncomplicated case, the process takes about one year from the date of your deposition. However, no church official is free to promise a specific date for a subsequent marriage until the tribunal gives final notification of an affirmative decision without restrictions. The parties are always free to contact the tribunal office regarding the status of a case.

What happens after a decision?

After a decision is reached by the judge, both parties and the defender of the bond are notified and have 15 days to appeal. If no appeal is lodged within the time period, the decision is considered final and the parties will be sent a final decree.

Not everyone who receives a declaration of nullity chooses to marry again. Nevertheless, personal failings in a former marriage belong within the competence of the confessional or pastoral counseling. Motives for a new marriage fall outside the expertise of the tribunal and should be discussed with the parish priest.

The judge, in his final decree, might caution an individual about remarriage or might require professional assistance if there is reason to believe that a person might repeat certain behavior in another marriage.

Can anything be done in the event of a negative decision?

Applications are screened carefully before acceptance. The tribunal hesitates to begin a trial unless it has reasonable grounds to do so. If anything is lacking at the outset, every effort will be made to establish what is lacking before trial.

It may be hard to understand a negative decision in a matter like this, especially when parties are hurt and are seeking healing and reconciliation with the Church. Being a court charged with upholding the law, some cases yield an affirmative result, while others do not. Tribunal decisions are not granted out of pity, but for reasons of fact. Where insufficient evidence exists to overturn the presumption of a valid marriage the tribunal must deny the declaration of nullity and endorse the validity of the marriage. A decision denying a declaration of nullity can be appealed by either of the spouses. The case is then reviewed by an appellate tribunal. For the Archdiocese of Milwaukee the normal appellate tribunal is found in the Diocese of Green Bay.

Does a Declaration of Nullity affect the legitimacy of children?

A church declaration of nullity is strictly a religious matter and does not affect the civil facts of the marriage. It is an evaluation of the spousal relationship exclusively and does not involve the legal standing of any children. In the majority of cases, the church understands that lawful wedlock took place before any question of marriage validity surfaced. The Church chooses to protect the status of any children born of a marriage entered lawfully, but which unfortunately fell short of the church requirements. Therefore, a declaration of nullity has no effect on the status of children born of the marriage.

How can the Church declare a marriage null that lasted many years and produced children?

This question deals with two different definitions of marriage. Christians are accountable to several authorities. We all must follow the requirements of civil law for the creation of and the dissolution of marriage. Catholics also must follow the requirements of church law regarding the validity of marriage. A wedding ceremony alone does not end the matter. In order for there to be a valid bond there must be a true partnership of permanence and fidelity. The fact that a marriage lasts many years or produces children is not absolute proof that all the requirements for a valid bond were met.

What is a documentary case?

In some marriages there are stumbling blocks (impediments) present from the very beginning to make a marriage invalid in the church. Most common among these situations are: where there was a prior, unresolved marriage; impotence; or the marriage of a Catholic celebrated outside the church.

When an impediment exists, there is a possibility of a documentary process. This process does not involve an in-depth review of the marriage relationship. Rather, it is based on documents such as marriage licenses, divorce decrees, baptismal certificates, etc. Documentary processes differ from the formal declaration of nullity process and normally take less time.

Is there a fee?

The Archdiocese of Milwaukee will incur significant expenses in the processing of a case. Currently, the Archbishop of Milwaukee through the Catholic Stewardship Appeal, provides approximately half of these expense. The petitioner is presented with a one-time administrative processing fee, amounting to about half of the actual court costs. The church review is never contingent on the ability to pay but rather on the facts of the case itself. Those with limited financial resources may set up a payment plan. In severe hardship circumstances the fee may be reduced or waived. Tribunal personnel are always willing to discuss these options. Justice will not be denied due to financial circumstances.

FOR FURTHER INFORMATION CALL

(414) 769-3300

AND ASK TO SPEAK WITH A MEMBER OF THE TRIBUNAL STAFF

Toll free, within the Archdiocese: 1-800-769-9373

Facsimile 414-769-3310

E-mail: tribunal@archmil.org

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Prayer for a Broken Marriage-

O Lord, you raised marriage to the dignity
of a sacrament, a sacred sign of love and
unity between yourself and your spouse,
the Church.

You give married couples the grace they
need to live together in love and harmony.
Yet, that grace seems out of reach for us.

Our love has ended and our marriage has
faltered. Events which led to our separation
stir me to upset and deep regret.

I come to you now in prayer, O Lord,
beseeching your mercy upon me and my
wife/husband, that your healing power may
reassure both of us that your love and
forgiveness remain.

Grant that the problems that led to our
marriage ending may be the occasion for
growth in both of us, greater respect for
each other, mutual pardon, and deeper faith.

If this be not your will, heavenly Father,
grant that all involved may see your
purpose in what has happened and that
they and all your Church may be forgiving
and understanding.

Teach me to seek after and acquire the inner
resignation to your will which alone brings
peace of mind.

Search my heart and see that I mean my
wife/husband no ill will but wish them
happiness now and in the future, that
happiness we were unable to achieve and
enjoy together with You at our center.

Know that my care for her/him remains.

Keep us both in your care, most merciful Lord,

Amen.