

***Understanding
the
Annulment
Process***

***The Tribunal
Diocese of Arlington***

***Diocese of Arlington
The Tribunal***

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Dear Friends:

The separation from a spouse is always a difficult time. The loss of a spouse through divorce always results in pain over the separation and causes anxiety over the future. The Church makes many efforts to offer the separated and divorced support to cope with the present and prepare for the future.

The Tribunal assists a divorced person to look at his/her former union to determine if it was a marriage as taught by Christ and His Church. For many, the Tribunal's mission in the Church is confusing and frequently misunderstood. The role and nature of the annulment process sometimes causes fear, anxiety and apprehension among many because of some serious misperceptions. Most who approach the Tribunal do so out of a motivation to clarify their status in the Church in the hope that they may be free to marry or have their current happy and successful marriage recognized by the Church.

To promote a greater understanding of the work of the Tribunal and the marriage nullity process, I have composed this brief booklet to list some of the most frequently asked questions and provide some clear and concise replies. I hope the booklet will help you better understand our work, and assist you in the preparation of your case for the Tribunal.

For further information, contact your parish priest or deacon. He will be able to answer your questions and assist you to prepare a petition for the Tribunal.

Sincerely,

Most Reverend Paul S. Loverde
Bishop of Arlington

What are the Church's teachings about marriage and annulment?

The Catholic Church, as does civil society, has requirements for its recognition of the bond of marriage. The elements for the religious bond of marriage are based on the Gospel and sacred tradition. Simply stated, not every expression of consent uniting two partners gives rise to the sacred bond of marriage as it is understood by the Church.

A decree of nullity, commonly called an annulment, is a decision concerning a specific marital relationship stating that the union was not a marriage according to the teachings of the Catholic Church. It does not deny that a relationship existed, nor does it place blame on one or both persons.

The Second Vatican Council's document, *The Church in the Modern World*, discusses the teachings on marriage. The Council Fathers taught:

The well-being of the individual person and of both human and Christian society is closely bound up with the healthy state of conjugal and family life. [...] The intimate partnership of life and the love which constitutes the married state has been established by the creator and endowed by Him with its own proper laws; it is rooted in the contract of its partners, that is, in their irrevocable personal consent.

On November 23, 1983, the New Code of Canon Law became effective. Among the many canons which discuss marriage, the following are worthy of reflection in the annulment process:

CANON 1055 -

- (1) "The matrimonial covenant, by which a man and a woman establish between themselves a partnership for the whole of life, is by its nature ordered toward the good of the spouses and the procreation and education of children; this covenant between baptized persons has been raised by Christ the Lord to the dignity of a sacrament."
- (2) "For this reason, a matrimonial contract cannot validly exist between baptized persons unless it is also a sacrament by that fact."

Canon 1057 -

- (1) "Marriage is brought about through the consent of the parties, legitimately manifested between

- persons who are capable according to law of giving consent; no human power can replace this consent."
- (2) "Matrimonial consent is an act of the will by which a man and a woman, through irrevocable covenant, mutually give and accept each other to establish marriage."

Canon 1060 -

"Marriage enjoys the favor of the law; consequently, when a doubt exists, the validity of a marriage is to be upheld until the contrary is proven."

Do I have a right to an annulment?

While everyone has the right to petition a competent Tribunal to consider a plea for nullity, no one has a right to an annulment. The decision is based on the evidence that is submitted by one or both parties in relation to recognized reasons of nullity, that is, canonical grounds for nullity. The final decision of the Tribunal is based on three criteria:

- (1) the ground(s) of nullity, agreed upon during the process;
- (2) the jurisprudence of the Church on this ground(s);
- (3) the proofs in the form of statements, declarations, depositions, documents and reports submitted by the parties or professional counselors.

In January, 1996, Pope John Paul II addressed the issue of the right to an annulment. He explained:

"It must be remembered that the spouses, who in any case have the right to allege the nullity of their marriage, do not however have either the right to its nullity or the right to its validity. In fact, it is not a question of conducting a process to be definitively resolved in a constitutive sentence, but rather of the judicial ability to submit the question of the nullity of one's marriage to the competent Church authority and to request a decision in the matter. This does not prevent the spouses themselves, since it is a question regarding the determination of their personal status, from having their essential procedural rights recognized and granted: to be heard in court, to submit proofs in the form of documentation, expert opinion and witnesses, to know all the instructional acts and to present their respective defenses. (Address to the Roman Rota, January 22, 1996, paragraph 3)

What are some possible grounds for annulment?

Among the signs that might indicate reasons to investigate the possibility of an annulment are the exclusion of the right to children, or to a permanent marriage, or to an exclusive commitment. In addition, there are youthful marriages; marriages of very short duration; marriages marked by serious emotional, physical or substance abuse; deviant sexual practices; profound and consistent irresponsibility and lack of commitment; conditional consent to a marriage; fraud or deceit to elicit spousal consent; serious mental illness; or a previous bond of marriage. The determination of the ground(s) should be made after extensive consultation with the parish priest or deacon and based upon the proofs that are available.

Who can ask for an annulment?

Either party in a marriage that has ended in divorce has the right to ask the Church to review a former marriage. Although one party makes the request, the other party has the right to participate in the process. The rights of both parties must be respected and protected by the Tribunal. The former spouse will be contacted and informed of his/her rights in the process. To avoid contacting the former spouse could invalidate the entire process, because the right of defense has not been protected.

Can I go to any Tribunal?

In the Latin Church, Church law outlines some criteria for a Tribunal to be able to accept a petition. The following Tribunals are able to process a petition: the Tribunal of the diocese where the wedding took place, and the Tribunal of the diocese where the former spouse currently lives. In addition, the Tribunal of the diocese where the Petitioner resides provided that the Petitioner and the former spouse live in the territory of the same Episcopal Conference (ordinarily, the same country), and the former spouse's Tribunal agrees after hearing from the person. Finally, the Tribunal of the diocese in which the majority of proofs (evidence) are located if the former spouse's Tribunal gives consent after notifying the person. For instance, Arlington could accept a case from the Petitioner who lives in the Arlington diocese if the marriage took place in this diocese; or it could also accept the case if the former spouse lives in the Arlington diocese; or if the former spouses lives outside Arlington but in the United States, and his/her Judicial Vicar agrees to notify the other party.

How long does the annulment process take?

On average, the annulment process takes approximately twelve to fifteen months. The process is often delayed

unnecessarily due to the fact that the person seeking an annulment or their witnesses do not respond promptly.

Why does the annulment process take so long?

The Church has a duty to protect, defend and teach the sacred dignity of marriage. When the bond of marriage is challenged through a petition of an annulment, the Church must examine the challenge cautiously to make sure the decision is a just one based on the law and the facts. The annulment process is designed to get to the truth of the matter as quickly and justly as possible while protecting the rights of the parties involved.

What is the divorced person's status with the Church while seeking an annulment?

Those who are divorced but who have not entered into another marriage outside the Church are free to - and are encouraged to - receive the sacraments. Being divorced does not alter one's status in the Church.

Catholics who are divorced and remarried outside the Church are not thereby excommunicated, but they are not free to receive the sacraments. They are expected and encouraged to fulfill their other duties in practicing their faith pending a finding of their freedom to remarry before the Church.

Do previous marriages of non-Catholics and unbaptized persons need to be annulled before these persons can be married in the Catholic Church?

The essential aspects of a Christian marriage apply to *all* marriages of the baptized, whether those being married are Catholic or Protestant. Whenever a person wishes to marry in the Catholic Church and there has been a previous marriage, that bond of marriage must be examined to clarify the status of persons and their freedom to marry. Such an examination may also be necessary in cases where one or both marriage partners were never baptized. The marriages of one or both parties being unbaptized may be resolved under special norms for Privilege cases. In these cases, a request is made to the Holy Father in Rome who is asked to dissolve the bond of marriage due to the non-baptized status of a party before and during the married life. These cases are also begun at the parish level with the assistance of a priest or deacon.

If a marriage is annulled, what is the status of the children?

An annulment simply grants those previously married the ability to remarry in the Church. It has no civil effects;

therefore, children born in lawful wedlock remain legitimate.

How much does an annulment cost?

It is expected that the person seeking an annulment will assist the Tribunal in partially meeting its administrative costs through a fee. The fee is usually paid in installments during the process, but other arrangements can be made. One's inability to pay, however, does not affect the acceptance or final decision; the fee can be waived or reduced as need be.

What is the Diocesan Tribunal, and what is its role in the annulment process?

The Diocesan Tribunal is an office of the Church that considers matters that pertain to Church legislation or Canon Law. Essentially, the Tribunal considers the status of persons who were married.

For a marriage to be annulled, it must be proven that an essential quality or element of the marriage was lacking. The Tribunal is the Church office that will help gather the evidence to ensure there is a just and expeditious consideration given to the petition.

How is the annulment process begun?

The person who wishes to have a marriage annulled must seek the assistance of a parish priest or deacon and should not contact the Tribunal directly. The required application, fact sheet, Petition and Narrative are completed with the help of the priest or deacon who will then forward them to the Tribunal office. The Tribunal carefully studies all the materials, and if the evidence seems to warrant consideration, will arrange a formal interview with the person seeking the annulment.

In addition, an interview with one of the Tribunal's professional counselors may be required. This interview generally takes place at the Tribunal office and is scheduled by the Judge or Judges assigned to the case.

If I seek an annulment, does my previous spouse have to be contacted?

Church law requires that the previous spouse be contacted and informed of the grounds, given the opportunity to give testimony and asked to name witnesses. While the former spouse does not always exercise this right, the law requires that this person be informed. In the event the address of the spouse is unknown, this should be explained to the priest or deacon at the time the application is

completed. While the current address of the former spouse may not be known, the address of a former spouse's family member or a friend may be used. The Tribunal will seek the cooperation of a family member or friend to ensure the former spouse receives the correspondence. The formal application should provide the former spouse's address or that of a relative or friend who can ensure the non-petitioning party will receive our mailings.

What preliminary application and documents do I need?

After meeting with the person, a parish priest or deacon will assist in the completion of the preliminary questionnaire and the formation of a *Petition* (a short history of the courtship, marriage and separation), the *Narrative essay* (a separate two or three page essay that provides a rationale for the annulment based on the family life of the parties, the courtship/engagement and the factors that led to the decision to marry). The above items and all *pertinent documents* (baptismal certificates for Catholic parties, marriage certificate and the *final* divorce decree are sent to the Tribunal.

The *Petition* essay should follow the format provided in the application and list the names and addresses of three witnesses. The *Narrative essay* provides a brief explanation of the cause of nullity. The witnesses are three people who knew the parties during the courtship, engagement and early marriage. They are knowledgeable and cooperative family, friends or co-workers who are able to provide their independent view of the couple and their decision to marry. After the completed application with the documents and two essays are sent to the Tribunal for review, you will be notified of the date and time for an interview.

At the time of the interview, the person seeking an annulment will be asked to sign and date all forms acknowledging the grounds for the investigation and appointing a priest or deacon as a Procurator/Advocate. The Procurator/Advocate will present the case to the Tribunal and will be able to review all the evidence. The former spouse will be apprised of his or her right to give testimony, name witnesses and also have a Procurator/Advocate. The same rights that are afforded to the petitioning party will be offered to their former spouse.

What is the purpose of the formal interview?

A formal interview usually is scheduled approximately four to six weeks after the preliminary application has been received. The purpose of the interview is to help the Tribunal gain a better understanding of the family backgrounds, courtship and marital difficulties, separation and divorce.

At the end of the interview, an overview of the process will be provided, and the role of the witnesses will be discussed. The witness testimony forms a major role in the acquisition of evidence in support of the request for nullity. Within a few days of the interview, the priest(s) assigned to the case as Judge(s) will send the Petitioner a detailed letter outlining the process and the role of the three witnesses.

After the interview, if the person seeking an annulment and/or the former spouse saw a therapist, counselor, psychiatrist or psychologist and would like a report to be included in the evidence, they must release this person from confidentiality and ask that a report on the counseling sessions be sent to the Tribunal. If additional information is needed, the Tribunal will send a specific form to the counselor.

Do the parties have the right to inspect the evidence which has been submitted to the Tribunal for a decision?

The Code of Canon Law gives each party of the former union the right to review the case file in the Tribunal office during regular business hours. After all of the evidence has been gathered, the Judge or Judges assigned to the case will notify the parties of their right to individually review the case file. Each party has the right to review the evidence gathered to date and respond to it. The Church recognizes that the parties cannot defend themselves if there is no opportunity to review the materials gathered in support of the ground of nullity.

After I submit a case to the Tribunal, can I set a date for a future wedding?

A future date for a Catholic wedding cannot be set or the validation by the Church of a current union cannot be done until there is a final and definitive resolution by the Court of Second Instance. Despite the fact that a petition has been submitted to the Tribunal, there is no certainty that the marriage will be found invalid. The Tribunal is bound to make a decision in conformity with evidence that has been submitted by the parties and with the jurisprudence of the Holy See. There are instances where one or both parties believe the marriage to be invalid, but there is inadequate evidence to support the conviction.

How does the Tribunal reach a decision to grant an annulment or support the presumption of validity?

Following the interview and the contact with the former spouse, the Tribunal waits for the witnesses' forms to be returned. After all the evidence is submitted, the Tribunal

determines if a further personal interview at the Tribunal with one of the Tribunal's professional consultants is required.

Next, the parties and the Procurator/Advocates are given the opportunity to review the evidence. The case is then submitted to the Defender of the Bond. The defender's role is to present to the Tribunal all the evidence that supports the validity of the sacred bond of marriage. After her/his observations are submitted, the priest-judge studies the case and renders a decision based on the facts of the case and the law.

Can the Church's decision to grant or not grant an annulment be appealed?

If the annulment is granted, the parties are given the right to appeal. If the decision is appealed, the entire case is reviewed again and a second decision given.

If the Tribunal does not grant an annulment, an appeal can be made either by the person seeking the annulment or by the former spouse. In such a case, it is important that new and substantial evidence be given. There are two ordinary Courts of Appeal. For the Arlington Diocese, the domestic Appeal Court is the Interdiocesan Tribunal of the Province of Baltimore, and the international ordinary Court of Appeal is the Roman Rota of the Holy See. If the Appeal Court overturns the first court's decision, the matter is sent to the Roman Rota in Rome.

Once an annulment is granted, am I free to marry?

The annulment is granted only after two courts have given a positive response to the petition. If the Arlington Tribunal grants the decree of nullity, and the decision is not appealed, Church law requires that a second court review the Arlington decision to ensure the decision conforms to the proofs, and the canonical process has been followed. In the case of an appeal of the Arlington decision, one of the ordinary courts of appeal must hear and resolve the matter.

An annulment does not always free persons who were formerly married to enter into other marriages. In some cases, the Church might caution against or even prohibit an individual from a remarriage if there is a serious reason to believe a future marriage will not be a happy and lasting one. To foster a future happy and successful marriage, the Tribunal may require some marriage counseling and preparation before a second marriage can take place.

No date can be set for a future wedding until there is a definitive affirmative decision to grant an annulment. There is, however, no prohibition against the couple's

participation in the formal marriage preparation program or the Rite of Christian Initiation of Adults with the understanding that participation in such a program does not guarantee an affirmative decision by the Tribunal.

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