

# DECLARING A MARRIAGE NULL



Archdiocese of Anchorage

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## WHAT IS A DECLARATION OF NULLITY?

You, or someone you love, values life in the Catholic Church. Those who choose to participate in the process of seeking a declaration of nullity are choosing an opportunity for a fuller expression of their faith in the church, or are allowing their loved one to experience peace of mind regarding divorce and the possibility of remarriage. It is comforting to know that Christian marriage, as one of the church's seven sacraments, is precious to us, and a real symbol of God's love for humanity. That is why it is so important to preserve the integrity of the sacrament. In order for a marriage to qualify as a true marriage, it needs to be a lifelong and faithful union of a man and a woman that is modeled after Christ's love for the church. In that way it must be ordered toward the good of the spouses, the growth and support of the love relationship, and its fruitfulness in bearing and educating children. Like God's love, marriage is creative and life giving. It invites us to come into contact with the presence and power of God.

As divorce rates indicate, many couples do not reach the completion of their matrimonial commitment. The church is sensitive to this problem and strives to be responsive to the needs of these individuals so that they may live good and productive lives in the church and in society. 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. The process of declaring a marriage null examines the marriage for the necessary elements of a valid union: permanence, fidelity, true companionship and love of the spouses, and openness to bearing and educating children. The tribunal seeks to determine if there was anything which prevented those elements from being present in the relationship at the time of consent, even though both individuals entered the marriage in good will. Marriages rarely fail because of ill will or malice present from the beginning, but rather, because one or both spouses were unable to create the quality of relationship necessary for a valid union due to physical, psychological, or circumstantial causes. After a declaration of nullity, the parties are considered free of that union. This declaration has no civil effect on the relationship or the legitimacy of children.

## 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 on **all previous marriages** from a Catholic tribunal. The Catholic Church's doctrine of faith does not recognize divorce as ending the commitment entailed in marriage, 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's marriage has been celebrated in the presence of a Catholic priest or deacon does not necessarily guarantee that all the requirements were present for a full and valid union.

Also, divorced and remarried persons in the R.C.I.A. (the Rite for the Christian Initiation of Adults) must have all previous marriages examined before being baptized or received into the church.

## WHAT IS A CHURCH TRIBUNAL?

Church law (canon law) requires every diocese in the Catholic Church to have a tribunal. The tribunal is an agency within the diocese that handles judicial matters, specifically the application of canon law and the protection of rights. Currently most of the church's court activity has to do with marriages. One of the tribunal's primary duties is to study a marriage at the request of either of the parties to decide if a valid bond was present.

Typical situations include: (a) a divorced Catholic seeking clarification of his/her status in the church, (b) a divorced and civilly remarried Catholic, (c) a divorced person of any religion planning on marrying a Catholic.

## 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.

## WHAT IS THE DIFFERENCE BETWEEN A CIVIL DIVORCE AND A DELARATION OF NULLITY?

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 invalid has no effect whatsoever on the legitimacy of children, child support or alimony judgments, nor on the 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 invalid. The Catholic Church presumes the validity of all marriages (including non-Catholics) and believes that marriage between any two baptized people rises to the level of 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 clear the previous marriage through the Catholic tribunal. The church considers the marriages of non-Catholics to be on an equal level with those of Catholics; presuming their validity until the contrary is proven.

## 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.

## 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 either: (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.

## WHAT ARE THE GROUNDS FOR A DECLARATION OF NULLITY?

The following are a few examples of the characteristics of a problematic marriage, any of which can pose a possible case for declaration of nullity. This is **not** intended to be a **complete list**.

- Broken marriages of the very young
- Consistent violent behavior
- Enduring alcoholism or drug dependency
- Profound irresponsibility
- Serious mental illness
- Contrary views about the permanence of marriage
- Marriages of short duration
- Deviant sexual behavior
- Criminal orientation
- Rejection of procreation and education of children
- Consistent infidelity
- Emotional Abuse
- Previous bond of marriage

## HOW IS THE PROCESS FOR A DECLARATION OF NULLITY STARTED?

The petitioning spouse may approach his/her parish priest, deacon, parish director, or parish pastoral minister or approach the tribunal directly. A petition form obtained from the tribunal office is used to start the process. This form asks for biographical data on the spouses and for a history of the marriage. The completed petition, with all necessary documents (i.e. marriage license, divorce decree, newly issued baptismal certificate), is then forwarded to the tribunal. Someone from the tribunal will contact the petitioner by mail to explain 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 mainly consists of prenuptial forms from the church where you were married. In some exceptional cases the tribunal will assist in the gathering of civil marriage records, and the divorce decree. A procurator is assigned to act on the petitioner's behalf in order to keep the case moving as smoothly as possible.

## WILL MY FORMER SPOUSE BE CONTACTED?

The tribunal does inform the other spouse, the “respondent,” that the investigation 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/her to come to our office 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 spouse to reply.

The former spouse is sent a letter setting forth his/her rights in the review process. The tribunal prefers to gather the testimony of both spouses. The respondent may also lodge any objections in person or in writing at the time of the summons. 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.

The church investigation 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, and to have an advocate represent them in the proceedings. The petitioner has no advantage merely by being 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 a decision. 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 review, but an equal participant.

## WHAT IS A PROCURATOR?

The procurator'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 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. Procurators 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 must be approved by the party he/she represents and by the judge. Once all the evidence for the case is gathered, the procurator composes a brief arguing 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 largely on the testimony of the spouses and on witnesses who knew of their relationship. The petitioner will be asked to supply at least three such witnesses. These are family, friends, or acquaintances who have valuable information about the marriage 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 important 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 drilled or 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.

The most helpful witnesses are usually those who knew the couple either before the wedding or at the time of the wedding. This is important in determining whether the consent rendered by the parties was valid or not.

## WHAT HAPPENS IN A DEPOSITION?

The deposition is the only part of the process that requires a visit to our offices. The remainder of the process may be conducted by mail or telephone. If it is impossible for you to be interviewed in Anchorage, other arrangements will be made for you. The deposition is really just an interview. This is not done in a courtroom setting before a panel of priests. The petitioner meets with a member of the tribunal staff either at the main offices or at a satellite tribunal site elsewhere in the archdiocese. This process generally takes one to two hours. The petitioner is asked a series of questions about the history of the marriage and courtship, and about each of the spouses. The staff member tries to be sensitive to the delicate nature of the subjects being discussed. There is no effort made to cross-examine the petitioner, nor is this a confessional. This is merely an effort to gather information crucial to judging a case. The respondent is also encouraged to come in 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 is charged with the task of upholding the validity of the marriage. The defender of the bond assures that everything undertaken satisfies the requirements of canon law, especially that the 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. If the defender of the bond feels that there is sufficient evidence, he/she will not oppose an affirmative decision.

## WHO IS THE JUDGE IN THESE CASES?

The ecclesiastical judge is qualified by training and practice in canon law, and is appointed by the Archbishop. The judge has the final decision whether a declaration of nullity is granted or not. The judgment is usually rendered by a single judge who is a cleric (priest or deacon). The judge's decision is based on the evidence gathered plus the observations of the defender of the bond.

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 party's contentions as well as a summary of the witness testimony. This right is observed by allowing parties, or their procurators, 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. Be assured that it is a responsibility of the defender of the bond and the procurator to ensure that no party is defamed during the process.

In certain cases the judge may seek the opinion of a qualified psychological 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 expertise. The cost of the psychological review is borne by the petitioner.

## HOW DOES THE TRIBUNAL ARRIVE AT ITS DECISION?

Once the trial has begun it does not cease unless the petitioner formally withdraws the case or neglects to supply substantiating evidence. (A withdrawn case is placed in the inactive file, pending renewed interest by either of the parties or new evidence.)

The judge asks for a deposition from the petitioner and the former spouse, the respondent. Statements are taken separately from each, 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 or in person until a decision is reached.

When the evidence gathered is judged sufficient, the defender of the bond writes a document summarizing the evidence, recommends a decision, and makes sure everything in the trial complies with the dictates of canon law. In certain cases the judge may consult an expert for an authoritative opinion on the relationship. The judge studies the case and writes a decision. The decision is based on canon law and the facts of the case. A sentence is composed, a document of some length, explaining the decision and how this decision is in keeping with canon law, the testimony, the evidence at hand, and the recommendation of the defender of the bond.

## 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 a stamp of approval for particular behavior in a marriage. Nor should it be seen as a blessing of either spouse. The nullity 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 TO OBTAIN A DECLARATION OF NULLITY TAKE?

Due to the great number of cases considered and the requirements of canon law, an exact time cannot be specified. Usually the process takes about one year. 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. The parties are always free to contact the tribunal office regarding the status of a case.

## WHAT HAPPENS AFTER AN AFFIRMATIVE DECISION?

In accordance with canon law, an initial affirmative decision for declaration of nullity must automatically be given an appellate review. Only after a second affirmative decision rendered by the three-judge court are the parties ecclesiastically free of the bonds of the former marriage.

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. Motives for a new marriage fall outside the expertise of the tribunal and should be discussed with the preparing minister. 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. Both parties have the right to appeal a decision.

## 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 sometimes be hard to understand a negative decision in a matter like this, especially when parties are hurt and seeking healing and reconciliation with the Catholic 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. Sometimes the only option is for the tribunal to deny the declaration of nullity and endorse the validity of the marriage, where insufficient evidence exists to overturn the presumption of a valid 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 Anchorage the normal appellate tribunal is found in the Archdiocese of Seattle.

A church declaration of nullity is strictly a religious matter and does not affect the civil facts of the marriage. A declaration of nullity 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 and sincerely (by at least one of the spouses), but which unfortunately fell short of the church requirements. Therefore, a declaration of nullity has no effect on the status of children born to, or adopted by, the couple.

## HOW CAN THE CHURCH DECLARE NULL A MARRIAGE 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 a 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 at the time of the exchange of the marriage vows.

## WHAT IS A DOCUMENTARY CASE?

In some marriages there are stumbling blocks (impediments) present from the very beginning to make a marriage null in the church. Most common among these are situations are: where a party was too young for marriage; there was a prior, unresolved marriage; impotence; or the marriage of a Catholic was 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. An interview of the petitioner is required. The respondent in such cases is cited and invited to participate with a response form or deposition. Documentary processes differ from the formal declaration of nullity process and normally take less time.

## IS THERE A FEE?

The Archdiocese of Anchorage will incur significant expenses in the processing of a case. Currently the Archbishop of Anchorage, via a fee on the parishes, provides for the majority of these expenses. The petitioner is presented with a processing fee amounting to less than 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. Tribunal personnel are always willing to discuss the options. Justice will not be denied due to financial circumstances. Please see the processing fee schedule included with the petition form.

## FOR FURTHER INFORMATION CONTACT

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