

INVESTIGATION OF A PREVIOUS MARRIAGE

The following information is offered to explain the matrimonial process and the parts played in this process by the Petitioner (the one seeking the declaration of invalidity), by the Respondent (the other party or former spouse) and by the Diocesan Tribunal (the Church Court).

The Catholic Church believes that marriage is a lifetime exclusive partnership between a man and a woman, who give and receive mutual help and love and, from their union, bring forth and rear children. When Catholics and Eastern Orthodox Christians marry according to the requirements of their churches, and when people of other religions marry according to the requirements of civil law, the Catholic Church presumes that they marry validly. If both spouses are baptized, the Church also considers their marriage to be a sacrament and believes that, once consummated, it cannot be set aside by any human power, including a civil court.

Because it is a lifetime commitment, the decision to marry is one of the most serious decisions most people ever make. Since so much of the person is invested in this decision and since so much is expected in terms of time, energy, emotion and resources, when a couple marries, divorce is unthinkable. Yet, the unthinkable does happen to many couples; thus, the Catholic Church seeks to minister to divorced people.

While supporting the permanence of marriage, the Church offers to review the broken marriage to determine whether there could have been something defective from the beginning. Perhaps on the wedding day the marriage lacked one or more of the elements which the Catholic Church considers essential for valid marriage. If that

can be proven, the Church can declare the marriage invalid, indicating that it never had the permanent binding force of marriage. A Church declaration of invalidity, then, is a decision by the Church, based on proof, that on the wedding day a particular union lacked some element essential to marriage. Such decisions are sought and given through the Tribunal, the Church Court established in a Diocese to assist the Bishop in giving timely judgment to both parties.

In studying and deciding petitions for declarations of invalidity, the Tribunal seeks only the spiritual good of the people involved. The Tribunal makes no attempt to assign blame for the breakup of the union. A Church declaration of invalidity does not have civil effects. ***A decision for invalidity does not make children illegitimate.*** It cannot be used to question a child's paternity. It will not influence a civil court to set or change terms of civil divorce, child custody, support or property settlement. If a marriage is declared invalid by the Tribunal, the spouses, so far as that marriage is concerned, are free to marry others in the Catholic Church once all stipulations placed by the Tribunal have been fulfilled. As a result of that freedom, the Catholic spouse or spouses in the new union are able to participate fully in the life of their Church.

Grounds for Invalidity

Because there are many reasons why a union may lack one or more of the basic elements of a binding marriage, it is not possible here to list and explain them all. However, many correspond to at least one of the following questions:

1. Was the marriage ceremony legally acceptable to the Catholic Church?
2. Were both spouses free to marry each other?

3. Was each spouse adequately prepared to understand, accept and fulfill the rights and obligations of marriage?
4. Did each spouse intend to accept and fulfill what, in the Church's tradition, has been taught as God's plan for marriage?

If a person can honestly answer "No" to any of these questions as they apply to her or his marriage on the wedding day, then it is possible that some grounds for a declaration of invalidity exist.

Proof of Invalidity

Marriage is never a private affair. It is recognized by society. It has legal existence before the Church and the State. It is a matter of public record. And for Catholics, marriage in the Church between two baptized people is a celebration of the sacrament in the presence of the Church's minister and the Church community. Therefore, for a declaration of invalidity Church law requires proof beyond simply the word of the person seeking it. Of course, the Church will rely heavily upon the declarations of the spouses. No one knows the truth better than they. The additional proofs usually come from the testimonies of witnesses - relatives, friends or acquaintances who knew the spouses during their courtship and marriage and are willing to offer information to the Tribunal. Marriage counselors, psychologists, medical doctors and other professionals also may act as witnesses; but when they do, they require a release signed by the person about whom they are giving information. Medical, military, government or judicial records can be admitted as evidence. Sometimes even the transcripts of civil action, especially civil annulment, can provide proof not available elsewhere. In certain instances, testimony about the credibility of a spouse (character witness) is acceptable. Witnesses are much

more likely to participate if their cooperation has been secured beforehand, so the Petitioner should notify them in advance that they will be contacted by the Tribunal to give testimony. The former spouse, the parents of both parties, and witnesses suggested by both parties are among those contacted.

The Matrimonial Process

Either spouse may seek a Church declaration of invalidity of her or his marriage. A person may apply to the Tribunal of the Catholic Diocese where the marriage took place, where the former spouse resides, where the person seeking the declaration of invalidity has a permanent residence, presuming the former spouse lives within the same Episcopal Conference, or where the majority of proofs will be collected. In some cases, the Tribunal where the former spouse lives has to give consent.

To begin the matrimonial process in the Diocese of Dallas, either party from the previous marriage enlists the assistance of a local priest, deacon, or appointed layperson (called a Procurator-Advocate). If necessary, the Tribunal can be contacted for their names and phone numbers.

In completing the necessary forms, the one initiating the process (Petitioner) should answer all questions truthfully and as completely as possible. The Petition for Investigation of a Marriage Bond and the Petitioner's Questionnaire should be completed in black ink and signed by the Petitioner and by the priest, deacon, or appointed layperson, who will forward them, along with the other necessary documents, to the Tribunal. The Petitioner should keep copies of all materials sent to the Tribunal.

The other documents to be sent to the Tribunal, along with the Petition and

Questionnaire, are copies of the civil marriage and divorce records, the originals of the current baptismal certificates with notations for Catholic parties, the original of the current Catholic Church marriage certificate, and a copy of the Catholic Church prenuptial file. For the legal protection of all, no case can be accepted until the Tribunal has received a copy of the complete, final, signed, civil divorce decree.

The Decision and Appeals

When sufficient information has been received, the facts are given to a panel of three Judges, or to a single Judge, for a decision. An affirmative decision means that sufficient proof has been provided to affirm that on the wedding day some element essential to marriage was missing. A negative decision means, in the eyes of the Church, the presumption the marriage is valid has not been overturned. An affirmative decision usually must be reviewed by an Appellate Court. A decision may be challenged by either of the parties or by the Defender of the Bond. Marriage in the Church is not possible until an affirmative decision is rendered and, if required, upheld by the Appellate Court. To offer some assurance that previous factors will not seriously jeopardize the success of a subsequent marriage, the Judges may direct that before a new marriage is celebrated, adequate counseling be undergone. In addition, the Judges may require verification of fulfillment of civil and moral obligations arising from a previous relationship.

Time and Cost

The Tribunal can *never* guarantee beforehand an affirmative decision in a matrimonial case since the decision must rest on the facts which surface during the investigation. Therefore, plans for a future

church wedding cannot be made until a case has been given a final affirmative decision and the parties declared free to marry. The average time for the conclusion of a matrimonial case varies, and some factors are beyond the control of the Tribunal. The parties should notify the Tribunal in writing of any change in address or telephone number and should direct their questions to their Procurator-Advocates.

The Dallas Tribunal's expenses are provided through parish assessments. Should a psychological evaluation be required for the completion of a case, the Petitioner is asked to pay for the evaluation. The Petitioner also is asked to pay the fee for the Appellate Court.

Contacting the Former Spouse

The Tribunal must notify the Respondent. Church law and indeed basic justice require the other party to have the opportunity to know about the petition for invalidity and to defend the validity of the marriage. For this reason, the Tribunal asks for the Respondent's address or the name and address of someone through whom the Respondent can be reached. While the Tribunal does request that the Petitioner notify the Respondent to expect to receive a letter from the Tribunal, it does not require that the spouses have face-to-face contact in the Tribunal. But the Tribunal must extend to the Respondent the right to be heard. This right to be heard includes the opportunity to know about the petition, to offer information about the marriage, to name witnesses to be contacted, to be informed as to the progress of the case and to challenge the decision. The Respondent may choose not to exercise this right to be heard; that choice will not prevent the Tribunal from completing its study.

Do I Have a Case?

Each request is as unique as are the persons involved. While no one can be guaranteed a declaration of invalidity in advance, a person who thinks her or his marriage may have been defective from the beginning should request a study of that marriage. Many already have received justice through the matrimonial process. The Tribunal staff will do everything possible to assist the parties in this important matter.

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Matrimonial Cases and the Tribunal Process



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