

**A PASTORAL GUIDE
FOR THE PREPARATION OF
MARRIAGE CASES**



**OFFICE OF THE
METROPOLITAN TRIBUNAL**

Archdiocese of Los Angeles

2019

REFERENCE CHECKLIST

When preparing a case, it is often difficult to determine what type of case should be submitted. The following checklist considers specific factors which may be present in the marriage in question and refers the reader to the appropriate sections of the Pastoral Guide:

1. A party to the marriage in question had been previously married – see section on **Prior Bond**.
2. Both parties to the marriage were unbaptized and one party wishes to convert – see section on **Pauline Privilege**.
3. One party to the marriage was unbaptized – see section on **Favor of the Faith**.
4. Baptized Catholic married outside of the Church without dispensation – see section on **Lack of Canonical Form**.
5. Both parties to the marriage were baptized – see sections on **Impediments** and **Formal Process of Marriage Nullity**.

Special Notes:

- A. When one party to the marriage in question is Catholic, it is always wise to check to see if any of the invalidating impediments were present at the time of marriage and not properly dispensed. In case of doubt, call the Tribunal.
- B. If a baptized Catholic left the Church by a formal act between November 27, 1983 and April 9, 2010, he or she is not bound by the requirements of canonical form – that is, to get married in the Church.

CONCLUSION

The Tribunal staff hopes that this guidebook will assist the priests, deacons and other pastoral ministers of the Archdiocese in their work with those who are divorced or involved in invalid union. Pastoral ministers should always feel free to call the Tribunal for assistance and clarification.

For those interested in additional reading in this area, we recommend:

Marriage in Canon Law, Ladislaus Orsy (Michael Glazier, publisher)

Annulment: The Wedding That Was, Michael Smith Foster (Paulist Press)

Marriage, Divorce and Nullity, Geoffrey Robinson (Liturgical Press)

The Invalid Marriage, Lawrence G. Wrenn (Canon Law Society of America)

Christian Marriage, David Thomas (Michael Glazier, Publisher)

INTRODUCTION

“The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of offspring, has been raised by Christ the Lord to the dignity of a sacrament between the baptized.” (C.1055§1) This permanent and exclusive relationship between a man and a woman comes about through their mutual consent. In fidelity to the Gospel, the Church teaches that a marital relationship cannot be dissolved by the parties. Consent, once given, cannot be revoked. Those who separate from their spouses, therefore, are not free to remarry.

Nevertheless, divorce is a common phenomenon in contemporary society. Approximately half of all marriages in the United States end in civil divorce. Those engaged in pastoral care frequently encounter situations of divorce in the parish community as well as in the RCIA. Dealing with these cases requires time, sensitivity and compassion, most especially in situations where civil remarriage has already occurred. The pastoral minister in all cases should explore the possibility of rectifying the marital situation of the person in accord with the Church’s teaching and laws.

It is the primary function of an ecclesiastical Tribunal to judge whether or not the evidence exists to overturn the presumption of validity any specific marriage enjoys.

The Church presumes that marriages are valid. The nullity of a marriage must therefore be proven. Declarations of marriage nullity are not automatic nor given in every case. If nullity is not proven with the required moral certitude, the Tribunal is

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obliged to uphold the presumed validity of the marriage.

The concerns of the pastoral minister, however, go beyond the question of validity or invalidity. Divorce is a traumatic experience in a person's life. In dealing with individuals in this situation, the pastoral minister must be sensitive to each person's particular needs. Often the person finds it difficult and painful to recall the events of the previous marriage. There may be long-suppressed feelings of anger, guilt and frustration. These emotions may be directed toward the former spouse, the civil authorities and attorneys, or the Church's representatives. A related issue concerns the reception of the sacraments. The present discipline of the Church is as follows:

1. Those who are divorced but not remarried remain in good standing and there is no restriction on their participation in the sacraments of Penance and Eucharist. The only restriction is on their freedom to enter into a new marriage during the lifetime of the former spouse in the absence of an ecclesiastical declaration of nullity or dissolution. (See *Familiaris consortio*, #83)
2. The situation changes for Catholics who remarry after divorce or who marry a divorced person. Catholics in a situation of remarriage are not excommunicated. Still, there remains a moral impediment to the reception of the sacraments of Penance and the Eucharist. Church teaching holds that a person who remarries after divorce or who marries a divorced person is living in a situation at odds with the gospel (see Mark 10.2-12; 1Cor. 7.10-11). The policy of not admitting to the Eucharist those whose state of life externally contradicts Church teaching was reaffirmed by Pope John Paul II in his Apostolic Constitution *Familiaris consortio*, #84). Due to the danger of scandal involved, this teaching must be taken seriously. Nonetheless, even if sacramental restrictions apply, the divorced and remarried are still a part of the Church and need

encouragement to participate in the liturgy to the extent that they are able.

Frequently the pastoral minister encounters situations of divorce and remarriage in the RCIA. This is a particularly difficult circumstance, since a person living in an invalid union cannot be brought into the communion of the Church unless and until the marital situation is resolved. For those candidates who have never been baptized, the possibility of a Dissolution in Favor of the Faith or by the Pauline Privilege should always be explored. In other cases, the nullity of the person's previous marriage can at times be proven. That is not always the case, however, and the difficulty of entry into the communion of the Church remains. It is therefore extremely important that the marital status of each RCIA candidate as well as that of his or her spouse or prospective spouse be clarified at the initial interview.

When assisting a person to prepare a case for examination or to enter into a new marriage, the pastoral minister should always take care to determine that obligations of alimony and child support that have arisen from a previous union have been faithfully fulfilled by a person before any marriage in the Church is considered. Obligations toward children and spouses from previous union, even invalid unions, are considered serious moral responsibilities. Failure to fulfill those responsibilities is an obstacle to marriage in the Church.

Finally, those who submit a case for judgment should clearly realize that no date, not even a tentative one, for a subsequent marriage or validation may be set until a definitive decision has been given. All Petitioners in formal processes of nullity are expected to sign a policy statement indicating their awareness of this.

There are *fees* attached to the various cases, to help defray the operating costs of the Tribunal. An inability to pay the fee, however, should never prevent anyone from submitting a case. No petition is ever refused for that reason.

This guidebook provides information on the various grounds of nullity to assist those who minister to the divorced in preparing petitions for a declaration of nullity or a dissolution. The Tribunal staff realize that the guidebook cannot possibly cover every situation or question. Further assistance is available from the personnel at the Tribunal at 213-637-7245.

Ministering to the divorced is challenging and difficult. It requires time, patience and sensitivity. While solutions to a person's marital situation are sometimes possible, at other times no solution is available. Yet there remain pastoral opportunities through which the person can be assisted to accept the particular circumstance of his or her life. The pastoral minister must remain faithful to the teachings of the Church and sensitive to the spiritual welfare of the parties involved.

If you are involved in assisting couples preparing for marriage – whether for a new marriage after a dissolution or declaration of nullity has been obtained or for a first marriage – please direct all requests for any dispensations that may be required (either from canonical form or from dispensable impediments) to the Tribunal's secretary for dispensations at 213-637-7888.

DISSOLUTIONS

PAULINE PRIVILEGE

Pauline Privilege refers to the dissolution of a marriage between two unbaptized persons.

To invoke the Pauline Privilege:

- a. Both parties must have been unbaptized at the time of marriage, and the other party must still be unbaptized.
- b. Proof of non-baptism of both parties at the time of the marriage must be established.
- c. The Petitioner must sincerely seek to be baptized.
- d. The other party does not intend to be baptized and does not wish to be reconciled with the Petitioner.

Procedure:

The following are to be submitted to the Tribunal, using the required forms and questionnaires:

1. The completed petition form.
2. Authentic copy of the marriage license.
3. Final decree of divorce.
4. Petitioner's testimony, plus names and addresses of two witnesses regarding non-baptism (parents, older relatives, etc.)
5. Respondent's testimony and or address, plus names and addresses of two witnesses regarding non-baptism.

Please note:

The Petitioner should not be baptized until authorization from the Tribunal has been received. The first marriage is dissolved only when the Petitioner, having been baptized, enters into a second valid marriage.

FAVOR OF THE FAITH

Favor of the Faith refers to the dissolution by the Holy Father of a marriage in which at least one party remained unbaptized during the entire period of common life. The conversion of the Petitioner is not required in all cases.

Conditions:

1. All honest attempts at reconciliation have failed.
2. The non-baptism (before and throughout the course of the marriage) of at least one of the parties to the marriage has been established.
3. The Petitioner and the prospective spouse or present civil spouse were not the culpable cause of the breakup of the marriage.
4. The petitioner has a prospective (or present) new spouse. (There may be exceptions in certain cases.)
5. No scandal may result from the granting of the dissolution.
6. The promises (*cautiones*) must be signed by both the Catholic and non-Catholic party should a dispensation for disparity of worship or permission for mixed religion be required for the proposed new marriage.
7. If, after the breakup of the marriage in question, the unbaptized party became baptized, non-consummation must be proven.
8. Efforts must be made to secure the present whereabouts and testimony of the Respondent.
9. A Catholic Petitioner must do everything possible to ensure the religious education of the children from the former marriage.
10. The principles of justice toward the previous spouse and any children of the former marriage must be fulfilled by the Petitioner.
11. The Catholic parties must seriously practice their Faith.

Please note:

1. A Petitioner is not to be baptized or received into full communion with the Church without official notification that the Favor has been granted. Any and all exceptions to this rule must be discussed with the Tribunal staff.
2. Rome will not accept petitions for the dissolution of a marriage in Favor of the Faith in the following cases:
 - a. Where the Petitioner was previously married in a Catholic ceremony with a dispensation from disparity of worship and now wishes to enter into a new marriage which will also require a dispensation from disparity of worship.
 - b. Where one of the parties to the marriage in question has already received a dissolution of a prior marriage in Favor of the Faith.
3. Rome does not issue a progress report on the petition. If there is an issue with a petition, the CDF will contact the Tribunal immediately. Otherwise, after acknowledging that the case has been received, the Tribunal does not hear anything until the case is concluded.

Procedure:

1. The pastoral minister assists the Petitioner in completing the petition form in Favor of the Faith, secures the deposition of the Petitioner on the required form, and forwards the petition and deposition to the Tribunal along with the marriage certificate and final decree of divorce of the marriage in question.

2. The Tribunal evaluates the case to determine if the basic elements of a Favor of the Faith are verified and proceeds with the processing of the case.
3. The Acts of the case are forwarded to the Congregation for the Doctrine of the Faith (CDF).
4. The pastoral minister and the Petitioner are informed by the Tribunal of the eventual decision given in Rome.

DECLARATIONS OF NULLITY

LACK OF CANONICAL FORM

All Catholic, regardless of their ritual church (rite), are required to enter marriage before a qualified priest or deacon and two witnesses. If this form was not observed, if a dispensation from canonical form was not granted and if the marriage was never convalidated or sanated, then the marriage is invalid.

There are exceptions to this norm of law:

1. Eastern Rite Catholics marrying before an Orthodox priest after January 21, 1965;
2. Latin Catholics marrying before an Orthodox priest after March 25, 1967;
3. Baptized Catholics marrying between November 27, 1983 and April 9, 2010 who have left the Church by a formal act.

In addition, the Orthodox Churches require their members to marry before a qualified Orthodox priest (not a deacon) and two witnesses. The Catholic Church considers the marriages of Orthodox Christians which take place outside of the required form to be invalid because of Lack of Sacred Rite.

Procedure:

1. The following documents are to be submitted to the Tribunal:
 - a. The completed petition form;
 - b. A recent certificate of baptism (issued within 6 months);
 - c. An authentic copy of the marriage license;
 - d. The final decree of divorce;
 - e. An affidavit form from the other party, testifying to the non-validation. If that is absolutely unattainable, then affidavits from two qualified witnesses are acceptable.

Please note:

If the first spouse (**Chris**) has died, it is necessary to prove that his or her death took place subsequent to the second marriage and divorce (that of **Andy** and **Beth**).

The example given above describes the simplest form of a *Ligamen*. Unfortunately, many cases involve multiple marriages in which previous spouses had also been married before. If such occurs, it is helpful to write out a diagram of all the marriages, tracing all the unions back to the point where every party is marrying for the first time. Because of the complexity of such cases, it is often helpful to call the Tribunal for assistance.

OTHER INVALIDATING IMPEDIMENTS

Canonical impediments prevent a party from entering into a valid marriage. These impediments are:

1. **Age** (c. 1083): The minimum canonical age for a valid marriage is 16 for a male and 14 for a female.
2. **Impotence** (c. 1084): The inability to consummate a marriage, not just sterility.
3. **Disparity of Worship** (c. 1086): Marriage between a Catholic and a non-baptized person.
4. **Ordination** (c. 1087)
5. **A vow of chastity in a religious institute** (c. 1088).
6. **Abduction** (c. 1089): Forcibly carrying a woman off in order to marry her.
7. **Murder of a spouse** (c. 1090): To murder one's spouse or the spouse of another in order to marry that person invalidates the marriage.
8. **Consanguinity** (blood relation, c. 1091): To any degree in the direct line (e.g., father, daughter, and grand-daughter); through the fourth degree in the collateral line (first cousins).
9. **Affinity** (in-law relationship, c. 1092): to any degree in the direct line. no impediment in the collateral line.
10. **Public propriety** (c. 1093): The relationship arising from an invalid marriage or from public concubinage – invalidates a subsequent marriage with relatives of the other party in the first degree of the direct line.
11. **Adoption** (c. 1094): To any degree in the direct line: through the second degree in the collateral line.

Procedure:

If the existence of an impediment is suspected, the pastoral minister should request an investigation by the Tribunal, submitting along with the request any relevant documents (birth, baptismal or marriage certificates, testimony of Petitioner and witnesses, etc.)

FORMAL PROCESS OF MARRIAGE NULLITY

Marriage comes about through the mutual consent of the parties. If the consent of one or other of the parties is seriously defective as defined by law, no marriage is formed. The process to determine whether binding consent existed or not is called a formal process of marriage nullity.

INITIATING A CASE

An individual who has been civilly divorced and wishes to petition for a declaration of nullity should contact a priest, deacon or other designated pastoral minister. The minister will assist the party in preparing the petition, using the preliminary questionnaire provided by the Archdiocese.

Upon receiving a petition, the Tribunal reviews the material to determine if Los Angeles is competent to hear the case and whether there are possible grounds of nullity. If the Tribunal is not competent to hear the case, it will assist the Petitioner in presenting the case to a competent Tribunal. If no canonical grounds are evident, the petition may be rejected. If the Tribunal perceives some merit in the petition, it will proceed to an investigation.

It is extremely important that the proper address of the Respondent be given, since this person, as the other party to the marriage, must be notified and offered the opportunity to participate in the proceedings. Church law requires this. The citation of the Respondent, however, is done by the Tribunal. The pastoral minister should not seek testimony from the Respondent.

WITNESSES

The statements of the parties are generally not considered sufficient in themselves to prove nullity. Witness testimonies are also required concerning the circumstances surrounding the courtship, ceremony and married life. Witnesses should be chosen who knew the parties before and at the time of the marriage.

Expert witnesses provide valuable assistance to the Tribunal as well. Counselors, psychologists and psychiatrists can give insight into the emotional and developmental characteristics of the parties. Such insight is particularly important when a decision must be made regarding an individual's capacity to give binding consent. Whenever one or both parties consulted a counselor or therapist, the Petitioner should include the full name and address of the person, and the dates in which professional assistance was received. The submitting minister should never contact these experts directly. The judge in each case will determine whether such testimony will be requested.

THE HEARING

At times, the Tribunal may request that the Petitioner, the Respondent or one or other of the witnesses be interviewed by phone or be present at the Tribunal for further clarification of his or her testimony. Such interviews are conducted privately, that is, only officials of the Tribunal may be present during an individual's interview. At other times, such testimony may be taken via telephone.

THE DECISION

When the judge or judges conclude that no further investigation is needed, the case is brought to a conclusion. The Defender of the Bond, who argues for the validity of the marriage, presents observations for the consideration of the judge(s). The judge then decides the case and informs the parties of the outcome.

APPEAL OF THE DECISION

The Petitioner, the Respondent or the Defender of the Bond may appeal the decision of the Tribunal. The appeal must be made to the Tribunal that granted the decision within three weeks (15 days) of the notification of the decision. The Tribunal then sends the appeal, along with the Acts of the case, to the proper appellate court. The appellate courts for the Archdiocese of Los Angeles are the Tribunal of the Diocese of Orange and the Roman Rota.

If a marriage is declared null by the Tribunal and no formal appeal against the decision is made within the allotted time, the decision of the Tribunal is considered final.

RESTRICTIONS

At times, because of the nature of the case, a restriction (*vetitum*) is placed upon one or both of the parties forbidding remarriage in the Church until certain conditions are fulfilled. The purpose of the restriction is to ensure that the circumstances which led to the nullity of the previous marriage do not recur in the proposed new marriage. If a party receives such a prohibition, no marriage in the Church may be scheduled until the restriction is lifted by the Tribunal.

CIVIL EFFECTS

There are no civil effects to a declaration of marriage nullity in the United States. It does not alter one's moral and financial obligations toward the other party or one's children. Nor does a declaration of marriage nullity in any way affect the legitimacy of children born of the invalid marriage. The Church considers the children born of any presumably valid marriage, as fully legitimate, even if that marriage is subsequently found to be invalid.

LENGTH OF THE FORMAL TRIAL PROCESS

Each case for a declaration of marriage nullity has its own unique circumstances, therefore a definite time frame cannot be guaranteed. The time involved is governed by requirements of canon law and by the cooperation of the principal parties and their witnesses in providing sufficient testimony. The Tribunal strives to complete each case in a timely manner and in accord with canon law. That being said, cases in this Tribunal are normally completed within twelve and eighteen months from the date of acceptance by the Tribunal. Incomplete information or a delay in submitting testimony can often prolong the process. The Tribunal will notify the parties if additional witnesses or information are needed.

Therefore, no date for a subsequent marriage should ever be set until the case is concluded and the decision is final. There is no guarantee that an affirmative decision will be reached.