

## **Information concerning procedures for marriage cases at the Tribunal Office of the Diocese of Memphis**

### **Marriage Tribunal Office of the Diocese of Memphis**

#### **Rights and Responsibilities of the Petitioner and the Respondent and Confidentiality**

Both parties are equal before the law. The Tribunal notifies each party by mail as the investigation progresses. Both have the right to the assistance of an advocate as well as other procedural rights which the Tribunal respects and protects.

The Tribunal is the judicial arm of governance in the Diocese of Memphis. It abides by and upholds the canon law of the Roman Catholic Church and promotes the pastoral welfare of the Christian faithful. Tribunal procedures in the United States are purely ecclesiastical matters and are conducted according to the norms of ecclesiastical law. The law of the Roman Catholic Church allows both the petitioner and the respondent access to the acts of the case with certain restrictions. It is the policy of the Tribunal to disclose the acts of the case only to duly authorized persons or to other ecclesiastical tribunals if necessary for the resolution of the case. The confidentiality of the acts is essential for the Tribunal to fulfill its responsibility to promote and effect justice. Therefore, all materials received by the Tribunal become the property of the Tribunal.

#### **Expenses**

The Tribunal of Memphis does not charge a fee for processing marriage cases. This free service is made possible by the members of the Diocese of Memphis, particularly through the Bishop's Annual Appeal. An individual case ordinarily costs the diocese about nine hundred and fifty dollars (\$950.00). The Tribunal gratefully accepts donations to help defray this cost to the diocese.

#### **the catholic understanding of marriage**

Marriage is a covenant by which a man and woman establish between themselves a partnership of the whole of life, which of its very nature is ordered to the well-being of the spouses and to the procreation and upbringing of children. A validly contracted marriage is raised to the level of a sacrament solely by virtue of the fact that both parties are validly baptized. This is true even between two baptized non-Catholics. Through the grace of baptismal status, Christ himself raises a marriage to the sacramental dignity. Marriage between a baptized and a non-baptized person can be valid and binding even though not a sacrament.

#### **A declaration of invalidity**

*A declaration of invalidity*, also popularly called an "annulment," is a judgment made by a Tribunal of the Catholic Church that on the basis of evidentiary proof a given relationship is not a binding marriage according to the way the Catholic Church understands marriage as established by God. The procedure proves either that one of the essential elements of marriage or

the necessary personal capacity for competent consent was lacking at the time the parties wed. Therefore, a relationship which may have appeared to have been a marriage between two persons according to civil or social standards is determined not to have been a binding marriage in the Catholic Church.

### **The difference between divorce and an ecclesiastical declaration of invalidity**

Divorce puts an end to the binding contractual relationship which exists between spouses relative to civil law. From the point of view of the Catholic Church, divorce indicates only that the marital relationship has been severed. Divorce has no capacity to alter the binding nature of the marital contract or covenant itself which a couple creates by their exchanged consent.

On the other hand a *declaration of invalidity* issued by a Tribunal of the Catholic Church is a judgment based on proof that, because of some personal incapacity or because of the exclusion of some essential element of marriage, a valid and binding marital bond was never established by the two parties.

### **Children**

The law of the Catholic Church does not deny the factual or historical existence of the parents' relationship with their children nor does it deny the existence of a relationship that appeared to have been a marriage. Any child born of a relationship that was presumed to have been a valid and binding marriage at the time is legitimate, even if at a later date the marital bond is determined to have actually been invalid.

### **Non-Catholics**

The Catholic Church recognizes all marriages between non-Catholics to be valid and binding as long as they meet the civil requirements for the exchange of consent. A divorced non-Catholic, to seek marriage with a Catholic in the Catholic Church, must be considered free to marry. This requirement of freedom to marry is determined by the procedure of the Catholic Church if a person, Catholic or not, has been previously married.

### **The Previous Spouse**

Since both spouses were parties to the marriage, the law of the Catholic Church requires that the rights of both be protected. The Tribunal needs to contact the former spouse to fulfill this requirement. The two spouses do not need to have contact with one another during the procedure. The one who is requesting the *declaration of invalidity* does need to provide the Tribunal with a way to contact the former spouse.

### **Witnesses**

The allegation that a marriage was invalid needs to be substantiated and collaborated by the testimony witnesses who have knowledge of the parties before and at the time of the wedding. Witnesses can include family and friends, as well as counselors.

## The Procedure

The procedure is normally initiated at the local parish. A pastoral minister helps the person, called the petitioner, complete an application form. After the Tribunal receives the application, a staff member will contact the petitioner about initiating the proper procedure. At this stage, the Tribunal ordinarily assigns an Advocate who assists the petitioner during the remainder of the procedure. After the petitioner submits his or her testimony, the procedure ordinarily takes a year. However, no wedding can be planned until an affirmative decision has been rendered and ratified.

## Types of Procedures

The Catholic Church has several procedures it uses to determine the invalidity of marriages depending on the circumstances of how the marriage was contracted.

### Documentary cases

There are two types of documentary cases. The first applies to instances in which a Catholic exchanged marital consent without the presence of a Catholic cleric and two witnesses. The decree of invalidity is granted on the basis of a *lack of canonical form*. The second documentary process applies to cases where a person attempted to exchange marital consent even though he or she was party to a prior marital bond that had not been declared invalid. The obligations of the prior bond of marriage impede the second marriage and it is declared invalid on the basis of that impediment which is called *ligamen*.

### Privilege cases

There are two types of "privilege" cases. *Pauline Privilege* cases are those in which a marriage was contracted by two unbaptized persons, one of whom subsequently chooses to be baptized and the other of whom departs the marriage. Such marriages are dissolved in favor of a new marriage between the newly baptized party and another baptized person. It must be clearly established that the previous person remains unbaptized. The second type is the *Privilege of the Faith* case. This type of case addresses a marriage between a baptized person and one who is unbaptized. The non-sacramental marriage can be dissolved by the Pope in favor of a subsequent marriage in which the faith of the baptized person will be fostered. In these latter cases, request for the dissolution is made to the Holy See.

### Formal cases

The purpose of a formal case is to determine the capacity possessed by each party to consent competently to marriage *at the time consent was given*. This procedure is a thorough investigation focused on the parties as individuals and on their relationship during the courtship, engagement, and the wedding. Later developments during the marriage can sometimes indicate pre-existing incapacity or an invalidating factor but are not necessarily proof of such. This process has four basis stages:

### ***1. Application stage***

The person seeking a declaration (*Petitioner*) contacts any pastoral minister who then assists the petitioner with the initial application form and submits it on the petitioner's behalf. The application is reviewed by the Tribunal staff and if the case is determined to be formal, a comprehensive questionnaire is sent to the petitioner. Instructions accompany the questionnaire and the petitioner is assigned an advocate to assist him or her. The questionnaire includes a witness list and a list of professional counselors seen by the parties. Witnesses who know the parties well before the wedding and during the early years of married life are the most helpful.

### ***2. Investigation stage***

When the advocate returns the completed questionnaire and other forms, the case is assigned to a judge(s). The assigned judge then contacts the former spouse, called *respondent*, and gives the respondent the opportunity to participate in the proceedings. The respondent is not required to participate if he or she is unwilling. The procedure does not require the petitioner and the respondent to have personal contact. The judge contacts the witnesses later in this investigation stage. At times, the petitioner may also need to submit more information.

### ***3. Deliberation stage***

The judge(s) considers the pertinent law regarding the case as well as the testimony which has been submitted in evidence. The petitioner's allegation of invalidity must be substantiated and corroborated by witness testimony. Each case is unique. Therefore, it is impossible to predict the length of time a case will take from start to finish. ***No marriage may be scheduled in any Catholic parish until the entire procedure is completed and a confirmed decision has been issued in writing to the petitioner.***

### ***4. Appellate stage***

Every affirmative decision must be forwarded to the Tribunal of the Diocese of Nashville where it must be ratified before it takes effect. This requirement of church law ensures that a fair and just decision has been reached.

If the petitioner or the respondent disagrees with the initial decision, he or she may appeal the decision by informing the presiding judge of the desire for an appeal hearing. The judge forwards the case to the appellate court. Appeal can also be made to the Apostolic Tribunal of the Roman Rota if a party desires.

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