

# *A TIME FOR HEALING*

## The Formal Annulment Procedures of the Diocese of Albany

### *Frequently Asked Questions*



#### **The Office of Canonical Services**

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The Catholic Church understands marriage to be an enduring and exclusive partnership between a man and a woman for the giving and receiving of love and for the procreation and education of children. For those who have been baptized, a valid marriage is at the same time a Sacrament of Matrimony.

The Church in our day has spoken regarding marriage in a statement found in the **Pastoral Constitution of the Church in the Modern World** (#48), issued by the Second Vatican Council:

*The intimate partnership of married life and love has been established by the Creator and qualified by His laws. It is rooted in the conjugal covenant of irrevocable personal consent. It is an institution confirmed by the divine law and receiving its stability, even in the eyes of society, from the human act by which the partners mutually surrender themselves to each other. For the good of spouses and their offspring, as well as society, the existence of this sacred bond no longer depends on human decisions alone.*

*For God Himself is the author of Matrimony, endowed as it is with various benefits and purposes. All of these have a very decisive bearing on the continuation of the human race, on the personal development and eternal destiny of the individual members of the family, and on the dignity, stability, peace and prosperity of the family itself and of human society as a whole. By their very nature, the institution of Matrimony itself and conjugal love are ordained for the procreation and education of children and find in them their ultimate crown.*

*Thus, a man and a woman, who by the marriage covenant of conjugal love are no longer two but one flesh, render mutual help and service to each other through an intimate union of their persons and actions. Through this union they experience the meaning of their oneness and attain to it with growing perfection day by day. As a mutual gift of two persons, this intimate union, as well as the good of the children, imposes total fidelity on the spouses and argues for an unbreakable oneness between them.*

According to Church teaching, a real and genuine marriage between two baptized persons is permanently binding and cannot be dissolved. This is the law of God according to the evidence found in the Old Testament, the Gospels of Matthew, Mark, and Luke, the writings of St. Paul and almost two thousand years of Christian tradition. Although not every marriage is a Sacrament, each and every marriage (Catholic, Protestant, Jewish, non-believer, etc.) is presumed to be a valid marriage. The good of all concerned (spouses, children, in-laws, society, the Church, etc.) demands this presumption.

Divorce is unique among life's experiences. There is no precedent which can prepare an individual for it. Divorce is a process, not an event. Legal divorce can be pinpointed to a moment in time, to the signing of a court decision, but not so the experience of divorce. The experience of divorce is the result of a series of incidents which eventually erode the relationship between a husband and a wife. The ending of any marriage that has endured long enough for the two partners to invest portions of their lives, money, emotions and dreams is a critical experience.

The Catholic Church is aware of the stress involved with divorce. The Church addresses this issue through its ministry of the Tribunal, bearing in mind the needs of the divorced individuals, while at the same time supporting the permanence of the sacramental union.

The office of the Tribunal of the Diocese of Albany is an agency designed to help the divorced person intending another marriage, and the divorced Catholic seeking clarification of his or her standing in the Church. Information, assistance, and recommendations are available from the personnel of the Tribunal, who are present to help you.

The effect of an Ecclesiastical Declaration of Nullity ("Annulment") is to declare that the parties are not bound to a specific marital relationship, stating that the marriage in question was not a binding sacramental union. It is important to understand the meaning of this Declaration of Nullity. It does not deny that a real relationship existed, nor does it imply that the relationship was entered into with ill will or moral fault. Rather, this Declaration of Nullity is a statement by the Roman Catholic Church that the relationship fell short of at least one of the elements seen as essential to a true, genuine, and binding sacramental marriage. Therefore, the union in question cannot be seen by the Church as a source of marital rights or obligations.

While consent makes marriage, the Church requires that this consent must be offered in a legitimate form for the marriage to be valid. The canonical form prescribes that the couple must exchange their consent in the presence of the local bishop or pastor (or a priest or deacon delegated by the bishop or the local pastor), and in the

presence of two witnesses. This requirement is commonly referred to as the Canonical Form for Marriage.

**(1) *Who is bound by canonical form?***

Catholics and Eastern Orthodox Christians are bound to observe the canonical form for marriage. This means that unbaptized persons and Western non-Catholic Christians (Protestants) are not bound to observe the canonical form for marriage in order to celebrate a valid marriage. These individuals are not required to marry in the presence of a priest or deacon.

The marriage of Catholics requires canonical form as a general rule. It is possible for the local bishop to dispense from the requirement of canonical form for a Catholic person entering a mixed religion marriage, either in a non-Catholic religious ceremony or in a civil ceremony. With such a dispensation, the marriage would be recognized as valid by the Church.

Some examples will be helpful.

(a) If a Catholic and a non-Catholic marry in a non-Catholic ceremony without the Catholic party having received a dispensation from his or her local bishop, the Catholic party has not observed the required canonical form for marriage.

(b) If two Catholics marry in a civil ceremony or a non-Catholic religious ceremony, they similarly have not observed canonical form for marriage.

In these examples, (a) and (b), the Church does not recognize the union as a valid sacrament. The lack of form canonical process can be utilized to declare invalid the marriage.

(c) A non-Catholic or non-Orthodox person, whether baptized or not baptized, marries another non-Catholic/Orthodox person in a civil ceremony. The parties divorce; one of the parties now wishes to marry a Catholic. The Catholic Church recognizes as valid the marriage between these two non-Catholic individuals because these two persons are not bound to the required canonical form for marriage. The lack of form canonical process cannot be used to determine the validity of this marriage. Since the non-Catholic individual is validly married to his or her first spouse in the eyes of the Church, the Catholic individual cannot validly marry the person unless the individual's spouse, the other non-Catholic person, has died or an Ecclesiastical Declaration of Nullity for the marriage has

been decreed after the formal process. This is what is commonly referred to as an annulment.

**(2) *What is a lack of form canonical process?***

Only the marriages of those bound by canonical form for marriage but who did not observe the required canonical form can be declared invalid through an administrative process. By completing the lack of form questionnaire, available through your parish priest or pastoral minister, a party is petitioning the Tribunal to declare invalid the previous marriage. The short petition is the first step to demonstrate these elements:

-at least one of the parties was bound to observe the canonical form for marriage at the time of the wedding;

-the marriage was not celebrated in the presence of a Catholic/Orthodox priest or deacon, but rather in a non-Catholic/Orthodox religious ceremony or in a civil ceremony;

-the marriage in question was not celebrated with a dispensation from canonical form by the local ordinary of the Catholic party; and

-the marriage in question was not subsequently witnessed, validated, blessed, or sanated by an appropriate Catholic priest or deacon.

This process relies heavily on authentic documents verifying that at least one party to the marriage is a baptized Catholic or baptized Eastern Orthodox, and that the marriage was celebrated in a non-Catholic or non-Orthodox ceremony, either religious or civil. These documents, which must include the name and capacity of the celebrant, can be obtained from the civil authorities or from the church in which the marriage may have been celebrated.

**(3) *What is the formal process for petitioning for an Ecclesiastical Declaration of Nullity (“Annulment”)?***

The formal process is the initiation of an investigation into the validity of the sacrament of marriage when the conditions for a lack of form canonical process do not

exist. The formal process involves a thorough inquiry to determine if there was a defect of consent on the part of one or both parties.

**(4) *Who may apply for an Ecclesiastical Declaration of Nullity?***

Every person has the right to apply for an investigation of his or her former marriage. This application must be made to an ecclesiastical tribunal which has proper jurisdiction, i.e., the Tribunal of the Diocese where the marriage in question took place or the Tribunal of the Diocese in which either spouse currently resides.

The person initiating these marriage nullity procedures may choose which of these diocesan tribunals he or she wishes to approach. Church law does not determine any order of preference.

**(5) *Does an Ecclesiastical Declaration of Nullity affect the legitimacy of children?***

Church law expressly provides that children born of a marriage that has been declared sacramentally null are considered legitimate. A Declaration of Nullity granted by the tribunal does not in any way whatsoever affect the status of any children that may have born of the marriage. The children continue to be seen as legitimate in the eyes of the Church, as well as in the eyes of the State.

**(6) *Does an Ecclesiastical Declaration of Nullity have any effect under civil law?***

In the United States, Ecclesiastical (Church) Declarations of Nullity have no civil effects whatsoever. There are no civil effects regarding child custody, alimony, property rights, etc. Therefore some civil action either for a civil divorce or a civil annulment should have been taken before a person petitions the Tribunal for an Ecclesiastical Declaration of Nullity. If there has been no civil action and there is the slightest hope of reconciliation, the Tribunal would prefer that the parties try to reconcile their differences.

However, if reconciliation is not possible some civil action should be taken before the Tribunal begins its work, in order to protect one's civil rights.

An ecclesiastical declaration of nullity does not affect, alter or change any agreements, stipulations, requirements, etc., that may have been established or imposed by a civil separation agreement, or by a divorce or annulment decree. All such requirements remain in force and remain subject to the civil authorities.

It is the practice of the Tribunal of the Diocese of Albany to not accept a petition for a Declaration of Nullity of a marriage until the civil divorce or civil annulment has been finalized. While a person may submit a petition seeking a Declaration of Nullity for the marriage prior to obtaining a civil divorce or civil annulment, the matter will not proceed to the formal hearing or judgment until after the civil divorce or civil annulment has been finalized. It always remains the hope of the Tribunal that the marriage might still be saved and that there be a reconciliation of the parties. The grant of a civil divorce or a civil annulment would be seen as extinguishing this hope.

**(7) *How does a person initiate a petition for a Declaration of Nullity?***

A Petitioner for an Ecclesiastical Declaration of Nullity should contact his or her parish priest, parish life director or any other priest, deacon or religious with whom he or she is familiar and feels comfortable. Upon request, the Tribunal will send the parish minister a packet containing the necessary questionnaires and various forms to be completed and signed. Normally the Petitioner personally completes the questionnaire without assistance. However, in some cases the parish minister may be asked to assist in the completion of these forms. Upon completion, the Petitioner should contact the parish minister to review the responses and to have the necessary documents notarized. The completed packet is then returned to the Tribunal by the parish minister.

If the Petitioner prefers, he or she may contact the Tribunal directly and work with the Tribunal. This is done by calling the Tribunal office (518-453-6620) during business hours, requesting an appointment. At the Tribunal office, the Petitioner will be interviewed by one of the auditors who staff the Tribunal, and offer whatever assistance is required in the completion of the questionnaire.

In addition to the Petitioner's testimony, the parish minister or the auditor attempts to collect any other data that might be helpful in preparing a case, such as statements from clinicians, hospitals, institutions, law enforcement agencies, etc. In order to obtain this information legitimately, the Petitioner must sign the proper release.

**(8) *What about personality tests? Why are they used?***

At any time during the preliminary stages of the process, the parties to the marriage may be asked to take personality tests. These tests are meant to help the Tribunal determine if the problems existing in a given marriage were due to personality factors which could not have been overcome, and to help the Tribunal understand the relationship that existed between the two given persons in the marriage. These simple paper and pencil tests may be administered at the rectory, convent or spiritual life center by the parish minister, or may be taken at the Tribunal office (again, by appointment only). The tests cannot be given to the parties to take at home. They must be administered in a controlled setting at a scheduled time.

In the past these personality tests were routinely administered to any persons approaching the Tribunal, seeking a declaration of nullity of his or her marriage. The current practice of the Tribunal, however, is to ask that these tests be completed only when it has been determined by the Tribunal that they are needed and will be beneficial. Thus the parish minister assisting the Petitioner will only administer these personality tests when requested to do so by the Tribunal.

**(9) *Why are witnesses needed?***

Church law requires that the testimony of the Petitioner be corroborated by witnesses. The witnesses usually will be asked about the personalities of the parties involved in the marriage, the backgrounds of the parties, and factors within the courtship that brought about the couple's decision to marry. The witnesses do not need to be experts, simply people who knew the parties to the marriage and the problems of the marriage.

These witnesses will be provided a questionnaire for completion and submission to the Tribunal. This questionnaire is considerably shorter and less detailed than the questionnaire given to the Petitioner and the Respondent.

**(10) *Who may be witnesses?***

Anyone, including family members, relatives, friends, and members of the bridal party who knew the Petitioner and/or the former spouse and the marital problems can act as a witness. Thus, they may be family members, though they do not have to be. Ordinarily, the Tribunal asks for at least three witnesses. The parish minister or the Tribunal will contact the witnesses by mail and send them the witness questionnaires. The Petitioner is asked, however, to contact these witnesses in advance to seek their cooperation.

The Tribunal strongly prefers that the children of the marriage not be asked to assist as witnesses in these proceedings. It is only in the most exceptional of circumstances that the Tribunal would accept such testimony.

**(11) *Will the former spouse be contacted?***

Yes. In all marriage nullity cases brought before the Tribunal, the other party to the marriage, commonly referred to as the Respondent, has a right to participate. It is his or her marriage just as it is the Petitioner's marriage. Thus, law and justice demands that the Respondent be informed of these proceedings and given the opportunity of participating. Failure to contact and invite the Respondent to participate, except in the most unusual cases, would result in the proceedings themselves being declared invalid.

This is not to say the Respondent must participate, but rather must he or she be informed and invited to do so. The Respondent may choose to respond and participate or may decline to participate. It is not unusual for the Respondent to not reply at all to the Tribunal's invitation. Should the Respondent fail to respond or decide not to participate, it is important to note in these circumstances that the proceedings will move forward nonetheless. It is also important to note that the Respondent may object to the proceedings. While the Tribunal will always listen to such objections and strive to answer the person's questions and concerns in a serious and respectful manner, the Respondent does not possess "veto" power. In such situations the case will proceed, with the Respondent being kept fully informed as to the progress of the case.

Thus, the parish minister or the Tribunal auditor must attempt to inform the former spouse that the investigation has been initiated, and offer him or her the opportunity to participate. However, after a designated time period as required by

canon law and lacking a response from the other party, the parish minister or the Tribunal may bring the case to the judicial level for formal acceptance.

**(12) *What will be asked of the Respondent if she or he agrees to participate?***

If the Respondent agrees to cooperate with the Tribunal, he or she will be asked to fulfill the same steps that the Petitioner is asked to fulfill. The Respondent will be provided the same questionnaire as was given to the Petitioner. He or she will also be offered the opportunity of providing witnesses.

**(13) *What if the address of the former spouse is unknown?***

Every reasonable effort must be made to contact the Respondent. This is not optional. It is his or her right to know of these proceedings and to participate therein. If, after a genuine effort, the current whereabouts of the Respondent cannot be determined, the Tribunal will appoint a Procurator to represent the Respondent and to protect his or her rights throughout the proceedings. In such a situation, the case may proceed and be brought to a conclusion.

The Petitioner will be asked to provide the address for the Respondent. If he or she does not know the whereabouts of the former spouse, the Petitioner might be asked to offer the names and addresses of others through whom we might be able to contact the Respondent. The Petitioner would also be encouraged to seek the assistance of others, such as family members or long-term friends, who might know the whereabouts of the Respondent. As noted in Item 11 above, a failure to contact the Respondent could result in the nullity of the proceedings, and thus a diligent effort must be made to contact him or her.

**(14) *Will I be asked to appear before the Tribunal?***

Once the Judge assigned to oversee the case has examined the testimony and other material submitted, he or she will determine if it is necessary to have an in-person interview with the Petitioner and/or the Respondent. In some cases it is evident from

the testimony and other material that there is sufficient testimony and evidence to reach a decision in the matter, and thus a personal interview would be superfluous. There would be no need for a personal appearance at the Tribunal. In other cases, however, the Judge may see a need for additional testimony and thus may ask the Petitioner and/or the Respondent to come to the Tribunal office for a personal interview. Whether such as a personal interview is necessary will be determined by the Judge.

If the Judge sees a need for both the Petitioner and the Respondent to appear at the Tribunal to offer additional testimony, such interviews will not take place at the same time. The parties are always interviewed individually, commonly on different days.

**(15) *Who decides if a formal Declaration of Nullity may be granted?***

Most cases are decided by one Judge. It is possible, however, to have three Judges assigned to a case.

After accepting the case, the Judge writes to the Petitioner and the Respondent, giving his or her name and that of the Ecclesiastical Notary and the Defender of the Bond. Each letter provides the parties an opportunity to comment on or object to the procedural aspects of the case. The Judge must receive a reply from the Petitioner before he or she can continue processing the case. It is usually at this time that the Judge would ask the Petitioner or the Respondent, or both, to appear personally at separate times for an interview. As noted above, the Petitioner and the Respondent are not present at the same time.

In all cases, the Judge offers both parties an opportunity to submit further testimony, either in writing or in person. This would include the possibility of appearing before the Tribunal even in those cases in which the Judge may determine he or she has adequate testimony and evidence so as to proceed.

**(16) *With whom does the Judge consult in reaching his or her decision?***

When an adequate amount of testimony has been presented, the Judge may consult a psychologist for his or her professional opinion. Furthermore, the Judge consults the Defender of the Bond for his or her comments. The Defender of the Bond is charged with the task of upholding the validity of marriage and assuring that the proper canonical procedures are followed. When all the required consultation has been

completed, the Judge studies the case and writes his or her decision, either in favor of the Declaration of Nullity (against the binding nature [validity] of the marriage in question) or in favor of upholding the validity of the marriage (against the Declaration of Nullity being sought).

If the case had been assigned to a three-judge panel, each Judge would review the entire file and would then meet to discuss the matter, sharing their views and opinions. Each Judge would then submit his or her votum in writing, as to the nullity or lack of nullity of the marriage in question. The majority vote would determine the outcome of the case.

**(17) *What happens after a decision is rendered?***

The parties to the marriage are notified by mail of the decision rendered by the Judge(s). Once the parties have been notified of the result, they and the Defender of the Bond have a right to appeal the decision to one of two higher Tribunals: the Metropolitan Tribunal of the Archdiocese of New York or the Tribunal of the Roman Rota, a Tribunal of the Apostolic See. The party who desires to appeal must notify the Tribunal of the Diocese of Albany in writing within fifteen days, excluding Sundays and holidays.

If no one appeals an affirmative decision within fifteen working days, the decision becomes final, and the parties receive a decree formally declaring the bond null. Once this second letter is received, together with the formal decree, both parties would be free to enter into a new marriage in the Catholic Church. It is important to note, however, that the judge(s) may impose conditions that must be fulfilled before a marriage in the Church could be celebrated. See Item 18 below.

**(18) *Are there any requirements following an affirmative decision before a marriage may be celebrated in the Catholic Church?***

When informing both parties of an affirmative decision, the Judge may find it necessary to make a recommendation for counseling or impose a prohibition on either or both parties before any marriage or validation of a civil union may take place in the Catholic Church. Such a recommendation or prohibition would result from the factors seen in the case, especially those factors that led to the failure of the earlier marriage.

A recommendation is based on the hope that the person will pursue adequate counseling for the well being of all parties concerned in a subsequent marital relationship. It is in no way to be seen as a punishment, but rather on the Tribunal's hope that the person's future marriage will indeed be a happy and successful union. Such counseling may be had with the parish minister, the priest or deacon who will perform the new marriage, or with a member of the staff of the Consultation Center of the Diocese of Albany.

A prohibition is given in those cases where there is a serious doubt that the person is currently capable of entering into a binding marital union. This prohibition requires consultation with a professionally trained psychologist or psychiatrist and the Tribunal, before another marriage or the validation of a civil union may be celebrated in the Catholic Church.

These conditions will vary from one case to another, being determined by what comes to be seen through these nullity proceedings.

**(19) *How long will a case take and when can a date be set to marry in the Catholic Church?***

The Tribunal cannot say with any certainty how long a marriage nullity case will take. There are many factors that will impact the length of a particular case and these factors vary greatly from one case to another. The Tribunal can only estimate at this present time that a marriage nullity case will take approximately twelve months to complete. While the Tribunal will process each and every case as efficiently as possible, this time estimate is not a guarantee. **This is only an estimate.** In fairness to all persons approaching the Tribunal, seeking a Declaration of Nullity of his or her marriage, the Tribunal must handle all such cases in the sequence in which they are submitted. Thus, no date should be set for a future marriage in the Catholic Church until these proceedings have been concluded in their entirety.

Additionally, the Tribunal cannot guarantee what the outcome of a case may be. The ultimate decision may be in favor of the Declaration of Nullity or against the Declaration of Nullity. Also, as just discussed in Item 18 above, even when an affirmative decision is forthcoming, there may be conditions that must be fulfilled before a marriage or validation is allowed to be celebrated in the Church.

**NO PARISH MINISTER IS TO SET A DATE FOR A SUBSEQUENT WEDDING OR VALIDATION OF A CIVIL UNION IN THE CATHOLIC CHURCH UNTIL NOTIFICATION THAT AN AFFIRMATIVE AND FINAL DECISION HAS BEEN RENDERED BY THE TRIBUNAL OF THE DIOCESE OF ALBANY OR A HIGHER TRIBUNAL, AND ALL OTHER REQUIREMENTS OF THAT DECISION HAVE BEEN FULFILLED.**

**(20) Pope Francis said that the process for a Declaration of Nullity can be shortened to a few months. Can this be a possibility for my situation?**

In the new legislation concerning marriage nullity cases that has received considerable coverage in the media, Pope Francis allowed for the possibility that a marriage nullity case can be resolved when the nullity of the marriage bond is manifestly evident based on all of the documents and information before the Tribunal.

There are very specific criteria under which a case may be admitted to what is being called “the briefer process”. Chief among these requirements is the explicit, written statement of the Respondent that he or she agrees with the request being made by the Petitioner and that he or she agrees that the marriage in question was invalid from the beginning. Without such written agreement, this briefer process cannot be employed. The usual ordinary proceedings, as discussed above, would have to be employed.

If the Respondent participates in the process but disagrees with the petition, or if the Respondent chooses not to respond to the requests of the Tribunal to obtain his or her opinion about the petition, the briefer process cannot be utilized to investigate the validity of the bond. Even if the Respondent explicitly agrees in writing that the marriage was invalid, only a few cases will meet the requirements of law to be admitted to a briefer process rather than the usual, ordinary process. This is a determination that would be made by the Tribunal upon the submission of the case.

**(21) Is there a fee for these marriage nullity cases?**

In the Diocese of Albany there is at this present time **no fee** for the submission and processing of any marriage nullity case. The Holy Father, Pope Francis, recently promulgated revised norms concerning the processing of marriage nullity cases, in the *moto proprio* Mitis Iudex Dominus Iesus. In his statements preceding these norms, he spoke of a desire that the Church, “showing herself a generous mother to the faithful,

manifest, in a matter so intimately tied to the salvation of souls, the gratuitous love of Christ by which we have all been called.” Thus, while noting the need to safeguard a just and fair wage to all in our tribunal offices, he called for these marriage nullity processes to be free of charge if at all possible. The Holy Father clearly wants to make our tribunal processes equally available to all people. Thus, in light of the Holy Father’s call, Bishop Scharfenberger has decreed the elimination of all fees associated with the various nullity processes coming before the Tribunal of the Diocese of Albany.

While the Albany Tribunal has always attempted to make it clear that we would never turn away a person unable or even unwilling to cover the fees requested in the past, and that we would treat all cases in the same manner regardless of the person’s ability or willingness to cover the fees, this elimination will enable all people to more freely and comfortably approach the Tribunal. As it has always been, it remains our objective here at the Albany Tribunal to serve all who approach us in a timely and pastoral manner. Our primary goal has been and will always remain assisting those in need of our services, especially as they seek a clarification of their marital status and their ability to participate fully in the sacramental life of the Church.

***For further information or assistance, please call the Tribunal at 518-453-6620 during regular business hours and ask to speak with a member of the Tribunal staff.***

***[Revised – February 2016]***