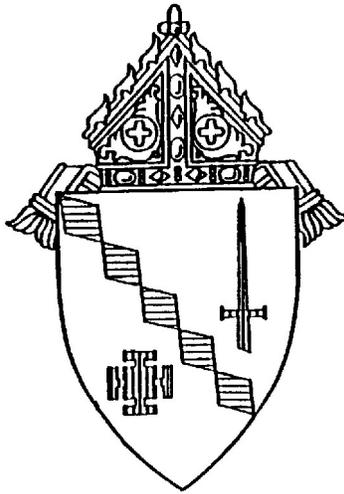


# FORMAL ECCLESIASTICAL DECLARATION OF NULLITY

CATHOLIC DIOCESE OF BIRMINGHAM IN ALABAMA



## THE MARRIAGE TRIBUNAL

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Birmingham, AL 35202  
(205) 838-8307

OFFICE HOURS:  
Monday thru Friday  
8:30- 12:00, 1:00-4:30

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*Please save this information for future reference.*

Rev. 2/2015

## THE MARRIAGE TRIBUNAL

This office investigates cases of marital failure to determine whether the parties entered a true marriage as understood in the Catholic Church. While availing itself of new insights gleaned from the modern sciences of psychology and sociology, it retains the concept of declaration of nullity from the Church's long and rich experience. Faithful to Catholic tradition it maintains the Gospel's prohibitions of arbitrary and unwarranted divorce while at the same time sustaining the basic right of individuals to enter a true marital union.

The Code of Canon Law of the Catholic Church describes marriage thus: "The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life, is ordered by its nature to the good of the spouses and the procreation and education of offspring." (Canon 1055). The canon continues that if the marriage is celebrated between two baptized people it has been raised by Christ the Lord to be a sacrament. In marriage, the couple is considered as a permanent sign of this reality. It is on the basis of this initial commitment that the marriage is discussed.

A Church declaration of nullity has no civil effect; an ecclesiastical declaration of nullity **DOES NOT** affect the legitimacy of children in civil or in Church law. Such a declaration does not impute guilt to any party. An ecclesiastical declaration of nullity merely gives assurance from the Catholic Church that the information available gives us sufficient reason to assert that the consent given at the ceremony does not meet the requirements of Catholic Church law.

All Catholics and any other person who desires to marry in the Catholic Church have the right to ask the officials of the Catholic Church to investigate the validity of their former marriage.

## THE PROCEEDINGS

### 1. WHERE TO BEGIN

A person desiring to obtain a declaration of nullity should contact the pastor, parish administrator or parochial vicar of the parish that they are attending or in which territory they reside. Upon setting up an appointment with one of the above, the party will be directed to the proper procedures to follow and will receive the proper forms for presenting the petition to the Tribunal. You will also be assisted throughout the entire process described below by your pastor, parochial vicar, parish administrator or by another person provided for you, who is known as your Procurator-Advocate.

### 2. INSTRUCTIONS FOR PREPARING A FORMAL TRIBUNAL CASE

In order for the Tribunal to process a petition for a declaration of nullity without unnecessary delay, please follow these instructions carefully, always with the assistance of your pastor or the procurator-advocate provided for you.

- A. **Application for Formal Case of Annulment** - To be completed by the **Procurator-Advocate** with the petitioner. We must have the last known address for your former spouse (respondent) in order to determine if this Court has the necessary competence to handle the case. If unable to obtain the address, please indicate in writing what efforts have been made to obtain it.
  - B. **Petition** - To be completed by the Petitioner and the **Procurator-Advocate**, giving the reasons (grounds) for nullity, and signed by petitioner.
  - C. **Mandate of Procurator-Advocate** - To be signed by petitioner and **Procurator-Advocate**. **The Procurator-Advocate is your pastor, parochial vicar, deacon or Lay Advocate.**
  - D. **Release Forms** - If counselors were used, at any time during the marriage, complete and sign the enclosed release forms giving the Tribunal permission to request information from them. You may go ahead and request the information directly from your counselor and provide it to us along with the completed application
  - E. **Autobiographical Essay Outline (Appendix)** - Petitioner must write a complete autobiography using this outline. Be as detailed as possible. All information received is the confidential property of the Tribunal and is never made available except as required by Church law for inspection by the Procurator-Advocates for the petitioner and the respondent, or the parties if necessary.
  - F. Procurator-Advocate must provide in a separate letter an evaluation of the case and any other information considered pertinent.
  - G. The following must be submitted with the above information:
    - 1) **Certified Marriage Certificate and Divorce Decree (originals)**. These will be returned at the conclusion of the proceedings.
    - 2) **Sacramental Records** indicating Baptism and Confirmation of any Catholic parties dated within the last six months, usually obtainable from the person's church of Baptism. **CATHOLIC ONLY.**
    - 3) **Small photo** of petitioner
    - 4) **Fee** established by the Bishop.
3. **PRESENTING THE FORMS**  
 When the party has completed all the instructions listed above, the Procurator-Advocate who has helped them prepare the forms should check to see that all the instructions have been carried out. The forms are then brought or mailed to the Tribunal by the Procurator-Advocate representing the petitioner.

**IT IS IMPORTANT THAT THE PERSON PRESENTING THE PETITION RETAIN A COPY OF WHAT HE OR SHE HAS WRITTEN AND ALL DOCUMENTS SHOULD SOMETHING HAPPEN TO THE FORMS IN THE MAIL.**

**4. REVIEW BY THE JUDICIAL VICAR**

The Judicial Vicar, appointed by the Bishop, reviews the information you have submitted and decides whether there is sufficient reason to accept the case. Not all cases can be accepted (either because the major reasons for the breakdown of the marriage are not sufficient or evidence to prove the nullity of the marriage does not exist). If the Petition is not accepted you are so informed and you would have the right to appeal our determination.

**5. ACCEPTANCE OF CASE**

If the information on the initial application is complete and sufficient to begin the process of investigation, both parties will be informed within 4 weeks of the receipt of the of the Application for Formal Case for Annulment. At the same time, you will be informed of the Protocol Number assigned to the case.

If the information is incomplete, the Procurator-Advocate appointed by the person requesting a declaration of nullity will be asked to obtain the information before the Tribunal will begin work on the case.

**6. THE GROUNDS**

Your Procurator-Advocate will assist you in filling in the Petition. It is imperative that you and your Procurator-Advocate clearly state the major reasons upon which the validity of the marriage bond is being questioned. Such reasons do not need to be stated in canonical language nor do you need to state a precise canonical ground unless you are certain of the canonical ground.

There are many grounds that the Tribunal may use to investigate the nullity of marriage. A few of them are as follows:

- a. **SIMULATION**: This ground points out that one or both parties entered the marriage positively **intending against** one of the three goods of marriage. They are: CONTRA BONUM PROLIS that they intended not to allow children in the marriage; CONTRA BONUM FIDEI, that they intended not to be faithful in the marriage; and CONTRA BONUM SACRAMENTI that they did not intend a permanent marriage and in many cases thought they could always get a divorce if the marriage did not work. "If either or both parties through a positive act of the will should exclude marriage itself, some essential element of or an essential property of marriage, it is invalidly contracted." (Canon 1101, §2)
- b. **FORCE AND FEAR**: This ground attempts to prove that one or both of the parties was forced or pressured to marry the other person. This can happen, for example, when parents

may give undue pressure for their son or daughter to marry, or a couple thought that there was absolutely no choice to marry possibly because the woman was pregnant. "A marriage is invalid if it is entered into due to force or grave fear inflicted from outside the person, even when inflicted unintentionally, which is of such a type that the person is compelled to choose matrimony in order to be free from it." (Canon 1103).

c. **INABILITY TO ASSUME AND FULFILL THE ESSENTIAL OBLIGATIONS OF MARRIAGE:**

This ground looks at the psychological ability of a person to fulfill the obligations of marriage. "They are incapable of contracting marriage because they are not able to assume the essential obligations of marriage for causes of a psychic nature." (Canon 1095, §3).

d. **DEFECT OF DISCRETION OF JUDGMENT:** This ground considers the incapacity of the intellect to make a mature evaluation of and the will to make a free choice for marriage. This incapacity is examined at the time of consent to marriage. The code of Canon Law states: "They are incapable of contracting marriage who suffers from a grave defect of discretion of judgment concerning the essential matrimonial rights and duties mutually to be handed over and accepted." (Canon 1095, §2).

These are a few of the more common grounds Tribunals may use for the investigation of the nullity of marriage.

7. **CONTACT OF THE OTHER SPOUSE**

The party presenting the application is called the **petitioner**. The former spouse is called the **respondent**. When the application is accepted, the respondent is contacted by mail and offered four weeks (28 days) to respond to our request for his or her cooperation. Church Law and justice demand that such an opportunity be afforded. The former spouses are never asked to appear in the Tribunal together.

8. **CONTACT OF THE WITNESSES**

If your case is accepted, the witnesses named by you (and by your former spouse) are contacted initially by mail and offered four weeks (28 days). They are asked not to divulge any information sought or provided during the course of the investigation. The information they provide is used so that the Tribunal may come to a better understanding of the circumstances surrounding the backgrounds of both parties before they met, how they met, how they arrived at the decision to marry, and how the marriage was lived out according to their recollection.

Upon receipt of witness information, the witness may be contacted by telephone or by mail for further clarification of their responses. They may also be asked to come to the Tribunal for a personal interview. This is done, generally, by the Auditor appointed in the case.

After all the witness testimony has been received, the petitioner and the respondent (if the respondent participates fully) may be requested by letter to set up an appointment at the Tribunal for psychological testing and an interview. They are invited to have their Procurator-

Advocate present for the interview. The interview usually takes place with the Judge assigned to the case. The Defender of the Bond may be present. It is the duty of the Defender to defend the bond of marriage. It may be necessary to have an Expert review the testimony provided in the case and submit their observations.

9. **STATUS INQUIRIES**

In order to protect the confidential information provided in a case, the policy of the Tribunal is to speak on the telephone with the Procurator-Advocate of the parties only. The parties are requested not to call the Tribunal except to set up appointments.

10. **FORMAL DECISIONS**

When all the information has been gathered into the case, the Acts are published (open for examination) **only** to the parties and their advocates, and if the parties wish to add any other testimony, they will have to present it to the Tribunal within the time stated in the letter. After the stated time the parties through their Procurator-Advocates are notified by mail of the conclusion of the case.

The case is then reviewed by the Defender of the Bond who gives written comments regarding the bond of the union. The Procurator-Advocates of the parties may also present written comments in their behalf. Once these comments are received, the Judge reviews the entire file and renders a decision. When the decision is rendered, the parties and their Procurator-Advocates are notified by mail.

11. **APPEAL**

The Defender of the Bond and the parties have the right to appeal the decision (whether Affirmative or Negative) of the First Instance court, within fifteen (15) days of the Publication of the Sentence, to the Second Instance Court of Appeal or to the Roman Rota.

12. **REMARRIAGE**

This is not automatic. A "Declaration of Nullity" regarding a past marriage does not mean that one is automatically prepared and ready for another marriage. If, for example, an ecclesiastical declaration of nullity is granted and you are already in a second marriage that is only civilly recognized, your parish priest, deacon or administrator prepares you through a series of talks and instructions to assist you in your preparation for and understanding of the Church's teaching on marriage. Once this preparation is satisfactorily completed, you will follow the requirements for exchanging vows in a Catholic marriage ceremony. In this way, your civil marriage may be convalidated by the Church.

\*\*\*\*NOTE\*\*\*\*No priest, deacon or administrator in the Diocese is allowed to assign even a tentative date for a subsequent marriage in the Catholic Church until you have in your possession a **Decree of Execution of the Sentence** which indicates that an **Affirmative Sentence and Decision** has been made by the First Instance Court.

**13. STIPULATIONS (PROHIBITIONS)**

Sometimes, the Court feels that there are some unresolved issues which indicate that some special consideration and/or preparation should be given before another marriage is allowed. The judge may place a MONITUM or VETITUM regarding future marriage in the Catholic Church for either or both persons until there is some assurance that the person is ready for marriage according to the Catholic Church's understanding of marriage.

**14. TIME INVOLVED**

Many persons ask how long the process will take. The time involved is governed by two factors: the amount of information required for a specific case; and the availability and cooperation of witnesses. The failure of witnesses to respond promptly, or the incompleteness of their information, can often create unnecessary delay. The Judge will indicate usually if further witnesses need to be contacted. According to Catholic Church Law, if there are no delays, a case would normally be completed in 10 to 15 months after acceptance.

**15. FEE**

A fee of \$200.00 is set by the Bishop. This fee is charged to cover part of the services rendered by the Tribunal. This is to be paid at the time the petitioner introduces the case. Often the parish will help underwrite the expense of the fee. The total expense of a formal case is \$2500. The Diocese underwrites \$2300.00 of the total amount it costs to process a formal case. If a **person** or **the parish of the person** introducing the case is unable to pay the fee at the time of introduction, the Procurator-Advocate and/or the pastor may request the Bishop to waive the Petitioner's expense. With the approval of the Bishop, the case will be heard without the fee.

On December 8, 2015, the Pope introduced a new process for seeking a Declaration of Nullity. It is called the **Briefer Process**. This process requires the consent of both parties to the marriage to undertake the **Briefer Process** and to both agree that their marriage was manifestly null (invalid) from its inception. The Bishop of the Diocese is the judge for the **Briefer Process**. When you have completed the Application for Formal Case and submit it to the Tribunal, the Judicial Vicar in the Tribunal will decide whether the **Briefer Process** may be applicable in your case and notify your Procurator-Advocate. At that time, we will require both parties to consent to the use of the **Briefer Process**. The **Briefer Process** will still require full and active participation of all parties and their advocates. The **Briefer Process** may reduce the time it takes to process your Petition for Nullity and come to a conclusion of your case.

Rev. 2/2015