

## 27. What happens if we do not receive a Declaration of Nullity?

The parties should contact their pastor and talk to him about their marital status in the Church. The pastor may suggest one of several alternatives:

- a) If new grounds can be established, the case can be resubmitted to the local Tribunal.
- b) The original case may be appealed to the Appellate Tribunal in St. Paul or to the Roman Rota in Rome, Italy.
- c) A person may remain single and in full communion with the Catholic Church.

28. Do you have other questions about the marriage nullity process in the Catholic Church? Please contact your pastor or the Office of the Tribunal in the Diocese of Winona.

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*In closing, please know that we recognize the spiritual and emotional challenges of this process and the fear you or a family member may have before beginning it if you find yourself in such circumstances.*

*Each person is infinitely valuable before God's eyes and ours. You are never "just an applicant." We strive to do all we can to help make this a graced experience. We also thank pastors for their important role in assisting those who participate in the annulment process.*

# DIOCESE OF WINONA-ROCHESTER

## OFFICE OF THE TRIBUNAL

# Annulments in the Catholic Church



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## 1. How is it possible to declare a marriage invalid?

Marriages are established at the time couples exchange consent and are presumed to be valid. This presumption can be overturned if one or more of the essential elements or properties of marriage are excluded when consent is exchanged or when a person's mental illness makes it impossible to consent to marriage. Each marriage is examined based on the testimony of the spouses and credible witnesses. A College of three Judges makes a decision as to whether it is proven beyond a reasonable doubt that the marriage is invalid. This decision is not a moral judgment on the lives of the parties involved and it does not attribute blame to either party. The purpose of the investigation is to discern the nature of the bond that exists between the parties.

## 2. My spouse was unfaithful and my marriage ended in divorce. Isn't infidelity a ground for a declaration for nullity?

Many applicants believe that if there has been infidelity in the marriage, this will automatically prove that the marriage was invalid. This is not correct. Infidelity is a sin, but it does not in itself invalidate the consent that was given at the time of the wedding. There is a difference between never intending to be faithful from the beginning of the marriage and an indiscretion, even a serious one, that occurs years into the marriage. An episode of infidelity does not invalidate a marriage or guarantee a declaration of nullity.

## 3. Does receiving a declaration of nullity or calling my marriage invalid mean I was never married?

This is probably our most frequently asked question. The answer is no. Civilly, you were married. You went through a ceremony, pledged yourselves to each other, perhaps had children and built a home and a life together. Religiously you entered into a partnership on the day of your wedding with the best of intentions. The Church attempts to determine whether all the elements of a valid bond were present on the day you consented to marriage. Did you intend to be faithful? Did you intend to offer your life for the good of your spouse? Did you intend to be open to children? Did you

intend that your relationship be permanent? In addition, you must have the basic human ability to understand what you were agreeing to and freely to choose it. More specifically, did you explicitly believe divorce to be an acceptable alternative to being in the relationship if it became unhappy? If you answer yes to this question, your marriage might be declared invalid. The Church determines whether any or all the elements of a valid bond were absent at the time of consent.

## 4. What about couples married for many years? How can a long term union later be declared invalid?

Many couples stay together for decades for the sake of their children, social appearances, personal business or family pressure. Though they have struggled mightily with their marriage, they have probably not been living in a community of life and love for a very long time. Merely "staying together" is much different than what the Church recognizes as the establishment of a true partnership. So it is possible for such a marriage to be declared null.

## 5. What is a Tribunal?

A Tribunal is a Church court made up of clergy and lay persons who are appointed by the Bishop to carry out marriage nullity trials. The Judicial Vicar is responsible for overseeing the work of the Tribunal on behalf of the Bishop; in the Diocese of Winona, this is Very Rev. Glenn Frerichs, JCL. The day-to-day operation of the Winona Tribunal is supervised by Jenna Cooper, JCL, who also serves as a Judge. Msgr. Paul Heiting and Rev. David Wechter, serve as Judges, and Julie Wright and Amber Newton serve as Notaries for the Tribunal.

## 6. What is the purpose of the Tribunal?

The primary function of the Tribunal is to receive the petition of divorced persons who ask the Catholic Church to determine whether or not they can be considered free to marry again in the Church. In receiving such petitions, the Tribunal conducts a marriage nullity trial according to the laws of the Church.

### 7. Do all cases receive an affirmative decision?

No. Any case may result in either an affirmative decision or a negative decision.

### 8. Why would a negative decision be given?

Canon law states that all marriages are presumed to be valid until proven otherwise, thus protecting the Church's teaching that marriage is permanent and indissoluble. A negative decision means that there is not sufficient evidence to overturn the presumption of validity of the marriage on a particular ground. It may not be proven to be invalid because it is valid or because, even if it is invalid, this has not been proven beyond a reasonable doubt.

### 9. If an affirmative decision is granted, does that mean both parties can marry?

After an affirmative decision is granted, both parties are free to marry once they have fulfilled any conditions set forth by the Tribunal.

### 10. Why would conditions to remarriage be attached?

The Catholic Church wants to be certain that the same factors which caused the invalidity of the previous marriage are no longer present. The Tribunal may require an evaluation by a psychologist or counselor to verify that both parties have the proper intentions and are capable of assuming the obligations and responsibilities of a new marriage.

### 11. Is there a fee for Tribunal services?

The Diocese of Winona does not charge for its services. Because it is very important to the Diocese that applicants are fully able to live out their lives as practicing Catholics without financial obstacles, the Diocese chooses to absorb the cost of the marriage nullity process.

The costs are covered through parish assessments and the Annual Diocesan Catholic Ministries Appeal. However, if a psychological assessment or professional counseling is required during the process or in anticipation of a future marriage, these costs are born by the party.

### 12. Does a decision by the Tribunal have any civil effect?

No, not in this country. All of the civil effects of the divorce should have been settled in civil court; therefore a Tribunal decision has no effect on child custody, property rights, alimony, etc.

### 13. Does a Declaration of Invalidity affect the legitimacy of children?

No. Children born of an invalid union are legitimate, since the Church does not deny that the parties entered at least a civil union and had a marital relationship. The Catholic Church embraces each child as a gift from God. The law of the Catholic Church states that children born of a marriage that is later declared invalid are legitimate.

### 14. How do I begin the marriage nullity process?

Generally speaking, a person contacts their local parish and speaks with their pastor. The process may not begin until it is proven that reconciliation of the spouses is impossible; this is usually verified by the presentation of a civil divorce decree. Together, the petitioning party (applicant) and their pastor fill out the application for a marriage nullity trial. The party may also request that an Advocate, who is an expert in canon law and the marriage nullity process, be appointed to assist with preparing the application. There is no charge for the service of our Advocates. Once the forms have been completed, they are sent to the Tribunal office along with a copy of the marriage certificate, divorce decree and baptismal certificate of the Catholic party.

### 15. How long will the process take?

Each case is different. Some cases are completed within one month, when it is a matter of verifying simple facts (e.g., a Catholic got married only civilly, a dispensation was missing, etc.). However, most cases require a lengthier process. Under ideal circumstances these cases are complete in about a year and a half. However, this is not a guarantee. No plans for a future marriage in the Catholic Church may be made unless BOTH parties to a new marriage are declared free to marry.

### 16. Must the other spouse be contacted by the Tribunal?

Yes. The citation of the other spouse (the Respondent) is an essential part of the marriage nullity trial. Canon law requires notification so that the rights of all parties to be informed and involved are protected.

### 17. What if the whereabouts of the other spouse is unknown?

The Tribunal will ask the Petitioner to make every effort to discover the present whereabouts of the other spouse. However, if he or she cannot be contacted, the case may proceed in the absence of the Respondent.

### 18. Why should my ex-spouse cooperate with the process?

The Respondent (other spouse) is one of the principal parties to the marriage being examined. The Tribunal wants to obtain a clear and objective picture of what happened in the marriage, why the union ended and what elements, if any, were missing when the couple exchanged vows. The cooperation of both spouses is clearly beneficial in this endeavor. Secondly, the process is potentially beneficial to both parties, and so it is in their best interest to cooperate fully and honestly.

### 19. What if the other spouse refuses to cooperate?

Because this procedure affects both parties, the other spouse must be cited and given the opportunity to participate. If he or she does not wish to cooperate, the Tribunal will make a decision on the basis of the information available.

### 20. Are witnesses necessary?

Yes. The Tribunal will ask both spouses to provide the names and contact information of people who are willing to assist the Tribunal in gaining a better understanding of the facts before and during the marriage, and the reasons why the union ended.

### 21. Can anyone be a witness?

Witnesses should be chosen on the basis of their objective knowledge about either one or both of the spouses, or the marriage. Since the validity of the marriage rests upon the moment

of consent (commonly called vows), the best witnesses are often those persons who have known the parties since before the marriage began. Citing children of the marriage or a present partner is discouraged.

### 22. Who makes the final decision?

The Diocese of Winona assigns three Judges to decide each case.

### 23. Is a divorced person excommunicated from the Catholic Church?

No. A Catholic is not excommunicated when s/he is divorced. A divorced Catholic is fully and completely a member of the Church.

### 24. Can a divorced Catholic receive Communion?

There is nothing in divorce itself that prevents a divorced Catholic from receiving the Eucharist and the Sacraments of Penance and Anointing of the Sick. Persons who attempt a subsequent marriage, however, are to refrain from receiving the Eucharist.

### 25. Why should a person whose marriage has ended in divorce seek the services of the Tribunal?

There are many reasons. First of all, every Catholic has a right to know their canonical status in the Catholic Church. Secondly, the process can be a profoundly healing experience—healing within one's self, with the Church, with significant others in one's life and above all with the Lord.

### 26. If I am a divorced Protestant and wish to enter into a second marriage with a Catholic, am I required to go through the marriage nullity process?

The Catholic Church recognizes the validity of marriages among other denominations, and does not place requirements upon the manner in which their consent is exchanged. However, it does retain the right to judge the validity of marital unions for the moral clarity of persons involved. Since the Catholic Church presumes that all marriages are valid until it is proven otherwise, baptized non-Catholics are to go through the marriage nullity process even if neither party to the first marriage was Catholic.