

## **FAQ - Marriage and Tribunal Processes**

### **What is marriage?**

Marriage is a permanent partnership of love and life between a man and a woman in which "the two become one flesh." God established marriage as the way of giving and receiving love and continuing the human race.

### **What marriages are considered valid by the Catholic Church?**

All marriages between a man and a woman are presumed valid until the contrary is proven. In considering whether a marriage bond is valid, the Catholic Church looks at five things: the form of the marriage, the freedom of the parties, their capacity for entering into marriage, their knowledge of marriage and of each other, and their intentions in entering into marriage. A marriage could be declared invalid if something is lacking in any one of these areas.

### **Does a priest have to be present?**

The requirement that a priest (or other official Catholic witness, normally a deacon) witness a marriage is necessary only for marriages involving at least one Catholic. In all marriages, sacramental or not, the woman and man exchange consent and so enter into marriage. In marriages involving Catholics, the law of the Church obliges the woman and man to exchange their consent before two witnesses and an official Catholic witness (normally a priest or deacon) in order for that marriage to be valid. In marriages involving the Orthodox, the law of the Orthodox Church obliges the woman and man to exchange consent in an Orthodox Church and receive the blessing of the sacred minister (a bishop or priest) in order for that marriage to be valid.

### **Is marriage a sacrament?**

Yes, if both spouses are validly baptized, the marriage is a sacrament.

### **Can non-Catholics receive the Sacrament of Matrimony, too?**

Yes. Any man and woman who are validly baptized give the Sacrament of Matrimony to each other through the exchange of their mutual consent.

### **What about marriage involving one or both parties who are not baptized?**

These marriages, although not sacramental, are presumed to be natural marriage as God intended it; therefore, they are presumed to be valid by the Catholic Church.

### **How is it possible to declare a marriage invalid?**

If one or more of the essential elements are missing from the beginning of the marriage, it can be declared invalid by a Judge of the Tribunal. This is a judicial decision based on the facts presented, not a moral judgment on the lives of the parties involved.

### **Is marriage forever?**

The Catholic Church believes that every valid, sacramental and consummated marriage is indissoluble. This is our understanding of God's law as found in the Scriptures, as well as 2,000 years of Catholic Church teaching.

**What is divorce?**

Divorce is a purely civil ruling determining civil marital status, rights and obligations between spouses, and obligations regarding children. Because the Catholic Church understands marriage to be a permanent bond established by God, it does not recognize the authority of the State or the spouses to terminate that bond. Therefore, the Church presumes the divorced parties are bound in marriage unless proven otherwise by a Church process. Nevertheless, the Church does recognize the purely civil effects of divorce.

**Does a Declaration of Invalidity (Annulment) mean that the marriage never happened?**

No. The decision of the Tribunal does not change or purport to change past facts. It is not taking something and wiping it away or undoing it. Nothing is erased. If an affirmative decision is granted, it means that the marriage which the parties entered into, generally in good faith and with hope for a common future, lacked one or more of the elements which the Catholic Church believes are necessary for valid marriage. The Church recognizes that the parties contracted marriage, but declares that there was an impediment, an invalidating condition, or a defect of consent that prevented it from being marriage in the fullness God intends for marriage. It remains a significant part of the parties' life journey, which affects not only them, but also their families and others in the community. For these reasons, a Declaration of Invalidity does not relieve the parties from fulfilling their continuing moral obligations to others, especially to children.

**Does a Declaration of Invalidity (Annulment) make children of the marriage illegitimate?**

No. A Declaration of Invalidity does not affect the legitimacy of children. No action of the Church can or does make children illegitimate.

**Besides declaring a marriage invalid, are there other ways of dealing with marriage cases?**

Yes, in certain limited circumstances. Rather than being declared invalid, a non-sacramental marriage in which neither party had been baptized at the time they exchanged their marriage vows could be dissolved by the Pauline Privilege; a non-sacramental marriage in which at least one of the parties had not been baptized could be dissolved by the Petrine Privilege (Favor of the Faith); and a marriage which has never been consummated could be dissolved based on that ground.

**What is the Tribunal?**

According to canon law, the Tribunal is the court established by the Diocesan Bishop to examine and adjudicate questions involving the status of persons, the protection of rights, and the imposition of penalties. In dealing with these questions, the Seattle Metropolitan Tribunal cooperates with pastors and other offices in fostering pastoral care throughout the Archdiocese. The legal practice of the Tribunal is regulated by the Code of Canon Law and the jurisprudence of the tribunals of the universal Church. Those who have studied the law of the Catholic Church at pontifically approved schools, known as canon lawyers, also provide canonical advice to the Archbishop, Auxiliary Bishops, and to all the faithful (laity, religious, and clergy). The work of the Tribunal is performed under the direction of the Judicial Vicar, a priest who who assists the Archbishop in his juridical ministry by presiding over judicial matters within the Archdiocese. In the USA, and in most other countries worldwide, a Tribunal decision has no effects in civil or common law.

**What is the purpose of the Tribunal?**

The purpose of the Tribunal is to protect the rights of faithful and all others who are entitled to approach the Tribunal regarding their rights within the Catholic Church. This purpose is most often exercised in assisting people who request that the Church examine the status of a marriage and their freedom to marry in the Catholic Church. In reaching this determination the Tribunal acts to protect the rights of both parties, including the right to one's good reputation, the right to a decision, and the procedural rights guaranteed by the law of the Church (canon law).

**What are the steps involved in determining the status of a marriage or the freedom to marry?**

Generally speaking, a person contacts a Parish Priest or another designated pastoral minister who has been trained as an Advocate for marriage cases. That person helps determine what type of case might be appropriate given the circumstances and then assists in preparing and submitting a petition along with other documents to the Tribunal. The Tribunal then pursues additional evidence, contacts other persons involved (e.g., the other party to the marriage, designated and qualified witnesses, experts), and evaluates all the information received to determine whether or not sufficient proof exists to declare the marriage invalid and to declare a person free to marry in the Catholic Church. The presumption in all cases is that the marriage in question is valid and binding on the parties. If there is not sufficient evidence to overcome that presumption, a negative decision will be rendered. If the Judge/s determine with moral certitude that there is sufficient evidence that overturns that presumption, an affirmative decision will be given. No one can guarantee or predict the outcome of any particular case. Therefore, no plans for a future marriage in the Catholic Church can be made unless, and until, an affirmative decision is communicated by the Tribunal.

**How long does the process take?**

There are several types of cases. Even among cases of the same type, each case is different. There are so many variable factors involved that it is impossible to predict the length of time a particular case may take. In many dioceses, under ideal circumstances, a formal case typically takes between a year and 18 months after receipt of the petition and other materials. A case which qualifies for the briefer formal case process will typically take approximately four to six months after receipt of the petition and other materials. However, this is not a guarantee. Difficulties often arise in obtaining necessary information, locating and gaining the cooperation of the former spouse and the witnesses, and so on. A case can move along more rapidly if all documents are presented as requested and if the parties and witnesses reply in a timely and informative fashion. However, the time involved also depends on the number of cases submitted and the availability of Tribunal personnel (and in the briefer formal case process the availability of the Archbishop).

**What are the rights of the other spouse (the Respondent)?**

The law recognizes the right of the Respondent (the other spouse) to participate fully in the process if he or she so chooses. Statements may be made either by completing a written questionnaire or by appearing at the Tribunal for a personal interview. The testimony of the Respondent will always be of assistance to the Court in reaching a decision. Also, the Respondent has the right to know the grounds proposed for invalidity, to appoint an Advocate (from among those approved by the Tribunal), to name witnesses and to know the names of the

Petitioner's witnesses, to reply to pleadings and observations, to know the evidence used in the decision, to know the conclusions and reasons for the judgment, and to appeal the judgment.

**Must the other spouse be contacted by the Tribunal?**

Yes. Both as a matter of justice to the other spouse, and to assist the Tribunal in gaining an objective perspective, the former spouse must be contacted by the Tribunal. In most cases, we ask that the person bringing the case (the Petitioner), as a matter of courtesy to their former spouse, contact him or her to make them aware of the pending process before they are contacted by the Tribunal. However, in cases of clear and grave danger to the Petitioner or to children, the Petitioner first should contact the Tribunal to learn more about possible options.

**What if the whereabouts of the other spouse is unknown?**

The person bringing the case (the Petitioner) is required to demonstrate that diligent efforts have been made to locate the other spouse. The Tribunal may make additional efforts to discover the present whereabouts of the other spouse. However, if after suitable searches s/he cannot be located, the Tribunal will proceed with the process. Nevertheless, the other spouse retains rights within the process and, if s/he subsequently learns of the process, may exercise those rights at that time. Therefore, every effort should be made to locate the other spouse at the outset of a case. The briefer formal case process established in fall 2015 cannot be used unless the other spouse either co-signs the petition or consents to it.

**What if the Respondent (other spouse) refuses to cooperate?**

Because this procedure affects both parties, the Respondent must be informed of the process and invited to participate. If s/he does not wish to cooperate, the Tribunal proceeds toward making a decision on the basis of the information available.

**Why should the Respondent (other spouse) cooperate?**

First, the Tribunal wants to obtain a clear and objective picture of what happened in the marriage, why it ended and what elements, if any, may have been missing from the outset. The cooperation of both spouses helps in this endeavor. Second, the process is potentially beneficial to both parties, and so it is to their advantage to cooperate fully and honestly.

**Does my case qualify for the new briefer formal case process established by Pope Francis?**

Certain cases will qualify for a new briefer formal case process established by Pope Francis effective December 8, 2015. There are two factors which affect eligibility for this process. First, both parties to the marriage must agree to petition for a declaration of nullity of the marriage. This can be done in two ways: *either* both can sign the petition *or* one can petition and the other can agree to the petition being heard by the Tribunal. The second factor which affects eligibility is whether the case is "evident" based on the facts and according to the Church's laws on proofs. Advocates can assist parties in determining whether their case might meet this second criteria. Once the tribunal receives the petition, the Judicial Vicar (or his delegate), will determine if the case can be accepted in the briefer formal case process. If not it will be accepted in the ordinary formal case process.

**Who are Advocates?**

Advocates are trained ministers (clergy, religious, and laypersons) who represent the parties at the Tribunal. They are to assist in the timely and orderly preparation of the case during the

preliminary investigation in the parish, see that the rights of the parties are fully honored, and provide canonical guidance and pastoral care as the party goes through the process. Additionally, they may write briefs and accompany the Petitioner or Respondent to any proceedings. The priest (or other minister) who witnessed the wedding may not serve as the Advocate; his assistance may be more valuable in the capacity of a witness. Normally, an Advocate's assistance is necessary for the presentation of the case by the Petitioner (the person asking the Court to look at the marriage). The Respondent (the other spouse) may also request the services of an Advocate for assistance.

### **How do I locate an Advocate?**

In the Archdiocese of Seattle, most Catholic parishes have persons trained as Advocates for marriage cases. They are appointed to assist those who are involved in marriage cases. Please contact your local parish or a parish near you to arrange an appointment with a certified Advocate. If you are not resident in the Archdiocese of Seattle, please contact the Seattle Tribunal for assistance.

### **Are witnesses necessary?**

Yes. The Tribunal is searching for a true and accurate picture of the parties' decision to marry and their living out of the marriage in question. Witnesses are necessary to assist in obtaining as objective and complete a perspective as possible regarding the facts relevant to the relationship. The Tribunal will ask both parties to provide the names and the current complete addresses of people who are willing and knowledgeable to assist the Tribunal in gaining a better understanding of the decision to marry, the marriage, and the reasons why it ended. If the petitioner demonstrates that there are no witnesses able or willing to testify, the Tribunal will assist in determining what other evidence could be helpful in confirming the parties' testimony.

### **Can anyone be a witness?**

Witnesses should be chosen on the basis of their objective knowledge and willingness to testify about either or both of the spouses, or the marriage in question. This could include parents, family, friends, or counselors. Children of a marriage and potential future spouses normally should not be witnesses. Tribunal officials (e.g., Judges, Auditors, Assessors, Defenders, Notaries, Advocates) appointed to a case may not be witnesses in that case.

### **Who will read what is submitted?**

All material relative to the process is treated confidentially as required by the Church's law. Only those who have a right to the information (the parties, their Advocates, and Tribunal officials) are permitted to review it for the limited purposes expressed in canon law. All are bound by oath to keep all information confidential and to use it only for the purposes permitted in canon law.

### **What are the costs?**

Pope Francis has asked local bishops to do their best to make marriage nullity cases gratuitous *to the parties* without harming the right of tribunal workers to a just wage (of course, cases are never free; the costs are covered from other sources). Therefore, the Archbishop has determined that fees will no longer be assessed for cases processed in first instance by the Seattle Metropolitan Tribunal. Rather, the Tribunal's expenses will be covered by the faithful of the Archdiocese of Seattle through their gifts to the Annual Catholic Appeal. However, parties who

appeal a decision to any second instance court or to the Roman Rota will be assessed the fee stated by that court at the time a case is accepted. Parties who petition for the favor of a Privilege of the Faith decision (which is granted at the Vatican) will be assessed the fee charged by the Congregation for the Doctrine of the Faith (currently \$475). All other types of cases handled by the Seattle Tribunal will be free of charge to the parties. Because the Seattle Tribunal invests considerable time and money in order to process marriage cases, donations are gratefully accepted to help offset expenses after the process is complete.

**May future marriage plans be made?**

No. The presumption in all cases is that the marriage in question is valid and binding on the parties. In order to overcome that presumption the Judge/s appointed to the case must determine with moral certitude that there is sufficient evidence to judge the marriage invalid. No one can guarantee or predict the outcome of any particular case; therefore, no plans for a future marriage in the Catholic Church can be made unless, and until, an affirmative decision is communicated by the Tribunal. Permission to marry or validate a civil marriage in the Catholic Church cannot be guaranteed by anyone before this process is completed. Furthermore, sometimes counseling will be required as a condition of entering a new marriage. No plans for a future marriage, not even a tentative date, may be made with the Parish Priest or Deacon until such time as a declaration of invalidity is given and conditions are satisfied. The Tribunal bears no responsibility for any promises or guarantees made by anyone if a wedding date is scheduled before the completion of a case.

**What books contain further information on the Catholic Church and Marriage Cases?**

Annulment: The Wedding That Was: How the Church Can Declare a Marriage Null  
by Michael Smith Foster, JCD  
Annulments and the Catholic Church by Edward N. Peters, JD, JCD.