

1. What is the marriage nullity process and why does it exist?

Jesus taught that marriage is indissoluble. Once a man and a woman get married, they are married until one of them dies, even if they someday separate, justifiably or otherwise. If they have in fact entered marriage, they remain married for life. However, it is possible for a man and a woman to attempt marriage, hoping for a life-long union, and believing in good faith that they have established a valid marriage bond, when in fact the marriage bond is invalid because it lacks something essential to marriage.

If the spouses in a *valid marriage* separate and divorce and one of them goes on to live in the manner of husband and wife with someone else, then he or she is living in an ongoing state of adultery. A married person's vocation is to lifelong fidelity to the marital covenant, even when (e.g., in cases of abandonment or necessary separation) that means living as though celibate. Christ knew our human nature and he knew that this was a hard teaching.

Nevertheless, certain marriages are invalid from the start. They have the outward appearance of a marriage and are usually entered into in good faith, but because of some impediment, some defect of consent, or some problem in the form of the marriage celebration, they are never really marriages at all. If there was really no marriage at all, and if that fact is publicly proven, then those two parties are free to marry someone else.

The Church presumes that when a woman and a man enter marriage they have entered a valid marriage, unless the contrary has been proven. The Church and society as a whole have the responsibility to uphold and support couples in their marriage vows even when one or both of them no longer want to be married. However, if there is *proof* that the marriage lacked something essential and was therefore never really a valid marriage bond, a new marriage could be recognized.

The spouses themselves, or even one of them, cannot simply decide privately that the marriage is invalid and that they are free to move on. The marriage nullity process is a judicial process developed over the centuries to allow people who believe that their marriage is invalid to attempt to prove that fact, all the while safeguarding the rights of both parties and upholding the dignity and indissolubility of marriage. A declaration of nullity does not and cannot dissolve an existing marriage; rather it is an official declaration by the Church that it has been *proven with moral certainty* that a given marriage bond was invalid from the start. When a marriage is actually invalid, declaring the nullity of the marriage is good and just.

2. Does a Church declaration of the nullity (invalidity) of a marriage bond mean there was never a marriage of any kind?

No. A Church declaration of nullity is not wiping away or erasing the relationship which existed. The Church recognizes that people who have attempted marriage, but whose marriage bond is in fact invalid, believe they are married and justifiably act in accordance with this belief. Although they are not validly joined in an indissoluble marriage, they are in what the Church describes as a "putative marriage." In this fashion 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.

3. Why is Pope Francis changing the marriage nullity process?

Pope Francis teaches exactly what Christ taught: that marriage is indissoluble. Indissolubility is part of the Good News! It tells us that God wants us to love and be loved unconditionally, and that he made us capable of that kind of love. Nothing that Pope Francis has said or done has changed that teaching. There is nothing merciful in finding a pretext for calling a marriage invalid when it is really just broken, or in declaring that a marriage is *probably* invalid even when real doubt remains, which is why Pope Francis very prudently retains the principle that a marriage cannot be declared invalid unless it has been *proven* beyond a reasonable doubt. His concern is not to have more “annulments” regardless of the truth of the matter, but to eliminate any unnecessary, artificial, or unduly burdensome barriers toward obtaining a just and expeditious judgment about whether or not a marriage is invalid.

Pope Francis also wants to minimize as much as possible the amount of time people spend in a state of uncertainty while their case is pending. The existing marriage nullity process, when followed faithfully, is both effective and (under ideal circumstances and considering the complexity of the matter) relatively expeditious. But like any fallible, human process it can and should be reformed when necessary. Pope Francis, working with a commission of experts, has reformed the process in order to make it as accessible as possible, without in any way undermining the integrity of the process.

4. How is the marriage nullity process going to change?

There are five major changes: (1) new rules for determining which tribunals can hear a particular case, (2) new requirements for tribunal personnel, (3) the elimination of the requirement for a second conforming affirmative decision, (4) the creation of a briefer and more streamlined process, judged personally by the diocesan bishop, for certain specific types of cases, and (5) a change in the approach to recovering tribunal expenses.

5. When do these changes take effect?

The revised laws take effect on December 8, 2015.

6. What is different about which tribunals can hear a case?

Every diocese has a tribunal, but not every tribunal can hear any marriage nullity case. The tribunal has to have some jurisdiction over the marriage in question. Since 1983 there have been four ways that a tribunal can have jurisdiction, but two of them required that a tribunal seek the consent of the Judicial Vicar where the respondent in the case lives. Under the revised law effective December 8, 2015, there are three ways that a tribunal can have jurisdiction to hear a case, and none requires consulting with the Judicial Vicar of another diocese. The Seattle tribunal can hear a case (1) if the marriage took place in the Seattle Archdiocese, or (2) if either party lives in the Seattle Archdiocese, or (3) if for whatever reason the majority of the relevant evidence is located in the Seattle Archdiocese.

Cases already pending in the Seattle Tribunal, and those admitted before December 8, 2015, follow the earlier law. Petitions admitted on or after December 8, 2015, follow the new law.

- 7. What are the requirements for tribunal personnel, and how are they going to change?**
Marriage nullity cases are normally tried before a “college” of three judges, all of whom meet to decide whether or not the marriage is proven invalid, but one of whom is responsible for most of the day-to-day handling of the case. Current law provides that only one of these three can be a qualified layperson. The other two must be clerics. The college of three judges will remain the norm under the new law. The new law requires one cleric and allows the other two judges to be qualified laypeople.
- 8. How will the new personnel requirements affect the processing of cases?**
In the long term, it will make it easier for the tribunal to remain adequately staffed, which is the single most important factor in handling cases in a just, thorough, and expeditious manner.
- 9. What does it mean that the requirement of a second affirmative is being eliminated?**
The whole marriage nullity process leads to the judges’ decision regarding whether the marriage been proven invalid or not. According to the 1983 law, as an extra protection against unfounded declarations of invalidity, before the parties could act on a decision of invalidity an appellate tribunal was required to review and uphold the decision. Under the revised law, if neither party nor the defender of the bond appeals an affirmative decision within fifteen days (three weeks), it becomes “executory” (meaning the parties can act on it, often by entering another marriage). This revised law applies to cases decided on or after December 8, 2015.
- 10. Why is the requirement of a second affirmative being eliminated?**
For the better part of the last several centuries, the requirement of a second conforming affirmative has been in place as a safeguard against unfounded declarations of nullity and other injustices, but it is not required by the divine law or by the very nature of the matter. Pope Francis has discerned that the extra certainty it affords is disproportionate to the additional amount of time during which the parties remained uncertain regarding their status, and to the requirements of time, energy, and resources that are entailed in the process. And since the right to appeal remains in force, everyone’s right to defend the validity of their marriage remains intact. Therefore, there is no longer a requirement of automatic confirmation by a higher court.
- 11. How long is the process supposed to last?**
The marriage nullity process is not something that can be rushed: marriages are complex and unique, and in order to know with moral certainty whether a marriage is invalid from the start, it is necessary to gather much information. That means questioning the parties, interviewing witnesses, and collecting documents and other evidence. All the while, both parties’ rights have to be carefully protected. All of this takes time. The law says that the process should normally be completed in a year in the first instance, but when delays arise it can take even longer. Every tribunal must process cases with qualified judges and defenders of the bond. Since many of these people have other responsibilities in the diocese, it is often

not possible to complete decisions within a year. Every tribunal aims at maximum efficiency, but never at the expense of the integrity of the process as a search for the truth.

12. What is the new briefer formal case process?

Even before the reforms, there were shorter processes that can be used in special cases when the nullity of the marriage is obvious and indisputable. The “documentary” process involves cases when an official document (e.g., a marriage certificate proving a previous marriage bond which has not been declared invalid) proves the nullity of a marriage beyond a reasonable doubt. When the documentary process is used to prove the impediment of a prior marriage, it is called a “*ligamen* case”. Because there is dependence on documents, the time needed to call witnesses is eliminated.

However, Pope Francis has highlighted the fact that some marriage bonds, which cannot be proven in a documentary process, are nevertheless obviously invalid. In such cases, some of the more time-consuming formalities of the ordinary formal case process could safely be omitted without compromise to the integrity of the process. For cases such as these, Pope Francis has created a new, briefer formal process.

13. Who qualifies for the briefer process?

The briefer formal case process is designed only for those cases in which it can be employed without injustice. Two strict qualifications have to be met: (1) Both spouses have to petition for it together, or if not, then the other party must at least consent to it; (2) The nullity of the marriage must be evident by the establishment of facts which are readily available. Most marriage nullity cases deal with a defect in marital consent, i.e., with an invisible, internal act of the will placed by the spouses, often several years prior. Clearly, it would be exceptional for such a defect to be patently obvious today. Unlike the documentary process, the briefer process can involve the questioning of both parties and knowledgeable witnesses, which is to be done all in one session when possible.

14. How does the briefer process work?

First, the parties (or one of them with the consent of the other) have to submit a petition for a declaration of nullity, which in addition to all the information normally contained in a petition, has to demonstrate *why* the briefer process could be used, i.e., *why* the nullity of the marriage is evident and also *how* it will be proven by readily available evidence. If the second party has not already consented to the process, that party must be cited and given fifteen “useful” days (i.e., working days, therefore, normally three weeks) to respond. If it is determined that the briefer process can be used, the judicial vicar issues a decree stating the proposed reason for nullity of consent, nominating an instructor (an official in charge of gathering the evidence) and an assessor (an official in charge of advising the bishop), and citing them along with the parties and the defender of the bond to come to a session at the tribunal within thirty useful days (i.e., working days). At that session, the parties will be questioned along with their witnesses, and other evidence may be presented. Afterwards, the defender of the bond and the parties have fifteen useful days to present their observations and evaluations of the evidence, at which point the whole case is presented to the bishop for judgment. If, based on all the evidence presented, the bishop is morally certain that the marriage is invalid, he will issue a decision declaring the nullity of the marriage which must be prepared within thirty useful days of his decision. If he is not morally certain, the case is

admitted to the ordinary formal case process. The evidence which has been gathered is incorporated and used in the ordinary formal process. Appeal against the bishop's affirmative decision can be made by either party or by the defender of the bond within fifteen useful days.

15. How long does the briefer process take?

A number of news outlets reported that the briefer process will last 45 days. This is simply untrue. Where does that number come from? Probably from adding the 30 days within which the session should be held to the 15 days for the presentation of arguments. But this number is inaccurate. The law allows up to 30 days to review and admit a petition, once it has been received. This time will be necessary if the other party must be cited and a response awaited. The law also allows 30 days for writing the sentence once the case has been decided. And the sentence cannot be acted on until the window for appeal has passed, another 15 days. In all, that is 120 days from start to finish, not counting the possibility of delays. Further, in the law such time periods refer to useful days, that is workdays; weekends and holidays are excluded. It is impossible for any case, no matter how strong the evidence, and even using the briefer formal process, to be completed in 45 days.

16. Do I qualify for the briefer process?

Because each case must be assessed based on its specific circumstances, it is not possible to answer immediately. No one needs to be overly anxious to qualify for the briefer process: as it is, the cases that would qualify for the briefer process are already the cases that are completed most quickly, and qualifying for the briefer process is no guarantee of an eventual declaration of nullity. After petitions are admitted, and the Tribunal has heard from the other party, the case will be reviewed to determine whether or not it qualifies for the briefer formal process. The petitioner (or co-petitioners if the parties petition together) will be informed of the determination.

17. Why is it important for both spouses to agree to the briefer process?

There is a common misconception that if both spouses agree that the marriage is invalid, a declaration of nullity is guaranteed. This has never been true, and the new law does not change that fact. Actually, the facts of the case, and not the spouses' agreement or disagreement on the matter, determine whether the marriage has been proven invalid. So why does it matter whether they both agree to the briefer process? This requirement helps protect both spouses' right to defend the validity of their marriage, including by insisting on the full, ordinary formal judicial process. Regardless of the process used, either party can also appeal an affirmative decision.

18. Why do many tribunals currently charge to investigate the validity of a marriage?

As a matter of fairness, fully in keeping with canon law, many tribunals pass on some portion of their expenses (salaries, supplies, office space) to the parties who request their services. If these expenses are not borne by the parties, they are borne by the Church, which ultimately means by the other people in the pews. No one is ever denied their rights due to difficulty or inability to pay. Anyone who needs a partial or total reduction of fees receives one. Even for those who can pay, the requested fees (normally \$500 for an ordinary formal process) only cover a fraction of what it costs to process the case. One sometimes hears complaints that

“annulments” are just a means for the Church to make money; the truth is that from a strictly monetary standpoint, Church tribunals operate at a heavy loss.

19. What did Pope Francis change with regard to tribunal fees and why?

Pope Francis did not eliminate all tribunal fees. He said that the process should be gratuitous whenever that can be done without harming the right of tribunal workers to a just wage. He is asking bishops’ conferences and local bishops to do their best to make them gratuitous *to the parties* (of course, they are never free; the costs are just covered from other sources, such as the Annual Appeal). He has two reasons for this. First, he wants to make sure that nobody is ever discouraged from exercising their rights due to cost. Even though partial or total reductions have always been granted liberally to anyone who needs them, Pope Francis does not want even the misconception about expense to be an obstacle. Second, he wants to be sure that tribunals are immune from even the slightest suspicion of financial corruption. There is no doubt that that suspicion sometimes exists among the faithful, even though (in the American context at least) it is unfounded.

20. When and how is the new law going to be implemented in Seattle?

As already noted, the law comes into effect on December 8, 2015. The tribunal is committed to implementing it by that time, but there are a lot of adjustments to be made. In the meantime, we continue to process our current extensive caseload as efficiently as possible. Feel free to call or email the tribunal with general questions. We will respond as quickly and fully as we are able, but please be patient with us. Because of concerns regarding confidentiality, we cannot discuss specific cases by email. If you have a case pending, we will notify you if these changes in the law will have an important bearing on your case. If you have other questions about your case, please do not hesitate to call the tribunal if your Advocate cannot provide an answer.