

Declarations of Nullity

The Catholic Church understands marriage to be covenantal partnership established between a man and a woman that lasts until death and whose purpose is directed toward the good of each spouse and the procreation and education of children. The matrimonial covenant has been raised by Christ the Lord to the dignity of a sacrament between the baptized.

The establishment of the marital covenant or partnership requires

1. that both parties are free to marry
2. for Catholics, that they exchange consent in a manner approved by the Church,
3. that they understand the meaning of marriage, are able to discern marriage with the other person and have the capacity to fulfill the obligations of marriage, if only minimally.

If challenged, the absence of any of the above-mentioned elements may result in the declaration that marital covenant was invalid, and thus was invalid (perhaps unknowingly) from the beginning.

The Diocesan Tribunal will utilize one of the following three processes to help parties determine the validity of a previous marriage. Below is a general description of each process and the circumstances when that process is usually applied.

Lack of Form

Persons baptized or accepted into the Catholic Church before marriage are required to exchange their consent before a priest, deacon or authorized minister of the Church, unless a dispensation has been given. This is commonly termed the Form of marriage. The process called “Lack of Form” applies to those cases when marriage of a catholic was attempted outside the Church.

The Process

1. Submit the “Application for Lack of Canonical Form” with necessary documentation
2. The case is reviewed by the Judicial Vicar
3. The Judicial Vicar notifies interested parties of the decision.

Plans for a future wedding should NOT be made until a decree communicating the invalidity of a previous marriage has been granted. The process usually requires two to four weeks for processing.

The Ordinary Process

When the nullity of a marriage is being challenged for reasons provided in the “Description of Grounds” sheet, the Ordinary Examination is used. This process is conducted as a trial. The Diocese of Winona Tribunal seeks to render a decision as responsibly and expeditiously as possible so that both parties can move on with their lives. Our experience has been that parties can expect a decision within ten to eighteen months. The duration of this process is largely dependent upon the cooperation of the parties and their witnesses.

The Process

INTRODUCTION

1. A libellus (Petition) and necessary documentation challenging the validity of the marriage is submitted to the Tribunal. Necessary documentation includes: current Certificates of Baptism for Catholic Parties, proof of baptism for non-Catholic Parties, Certificate of Marriage and complete final divorce decree.
2. The Defender of the Bond reviews the libellus, offering comment on whether it should be accepted
3. A copy of the libellus (not including the Description of Marriage) is provided to the other party, with an invitation to participate in the process. The reason for this is three-fold:
 - the process will affect the other parties juridic status in the Church
 - both parties to the marriage have the right to be heard and ensure that their rights are protected
 - in its resolve to provide a just judgment, the Tribunal desires that all parties engage the process
4. The Judicial Vicar decrees:
 - a. Admission of the Libellus
 - b. The constitution of the College of Three Judges; establish the specific reason(s) why the marriage is to be judged invalid

COLLECTION OF EVIDNCE

5. The parties are invited to provide an oral deposition (testimony)
 - a. The deposition is conducted in the form of an interview by one of the Judges or an auditor, who is a priest or layperson trained to conduct the interview.
 - b. While the Tribunal urges the Respondent (other party) to participate in the nullity process, a final decision is not contingent upon his/her doing so.
 - c. Depositions are conducted at the Tribunal or a local parish and are approximately 1 ½ to 2 hours in duration.
6. The parties are asked to submit a list of witnesses who will testify to facts pertaining to the grounds established in step four

7. The Tribunal receives the testimony of the witnesses
 - a. These depositions are usually 15-45 minutes in length and are conducted orally at the Tribunal or a parish office close to where the party lives
 - b. Arrangements will be made with the Tribunal of other dioceses for those witnesses who live outside the Diocese of Winona.
 - c. It occasionally happens that the Tribunal will ask an expert in psychology or some other science to interview parties and/or the Acts of the case to provide insight for the Judges;
8. Publication of the Acts: the Defender of the Bond, both parties, and their advocates are given the opportunity to review all of the material that has been gathered and to respond to it before arguments will be presented to the Judges. It is important to know that:
 - a. The parties have 15 days to do this
 - b. None of the information may be copied or removed from the Tribunal Office
 - c. Arrangements will be made to review the Acts in another tribunal when distance from the Winona Tribunal makes this step prohibitive
9. The *Ponens* (one of three judges whose responsibility it is to oversee each stage of the process) decrees the Conclusion of the Cause. This stage concludes the gathering of evidence.

PRESENTATION OF ARGUMENTS

10. The Defender of the Bond, both parties and their advocates are given 15 days to present written arguments in support of their position based upon the evidence that has been gathered.
11. The Judicial Vicar communicates to all interested parties that the College of Judges will convene to render a decision.

THE JUDGEMENT AND PUBLICATION OF THE DECISION

12. The Trial
 - a. After having read all of the material and prepared a document that describes their vote (*votum*) and the reasons for their decision, the Judges meet to discuss the case and render a decision.
 - b. A majority vote (two of three judges) is required to render a decision.
 - c. Moral certainty is required.
13. The Sentence (decision) is published to the Defender of the Bond, both parties and their advocates.
 - a. The Sentence provides the decision, reasons for the decision and any other pertinent information
 - b. All interested parties have no more than 15 days from receipt of the Sentence to present an appeal

The Briefer Process

In circumstances when:

1. the nullity of the marriage is “manifestly evident” from the onset,
2. both parties agree on the facts of the case
3. the evidence is easily accessible

a Briefer Process may be decreed by the Judicial Vicar. Since the nullity of the marriage is rarely evident to such a degree as to warrant this process from the onset, it is used infrequently.

The Process

1. A libellus (Petition presented by both parties) and necessary documentation challenging the validity of the marriage is submitted to the Tribunal;
2. The Defender of the Bond reviews the libellus, offering comment on whether it should be accepted;
3. The Judicial Vicar decrees
 - a. the acceptance of the Libellus,
 - b. that the Briefer Process will be used,
 - c. the appointment of the Instructor and two assessors
 - d. the day in which the parties and the witnesses are to appear at the Tribunal to provide testimony
4. The testimony is published to the Defender of the Bond, the parties and their advocates
 - a. All parties are welcome to present argumentation at this time
5. The Assessors present their opinion regarding the case to the Diocesan Bishop
6. The Diocesan Bishop renders a decision either in favor of nullity or that the case return to the Ordinary Process
7. If an affirmative decision is rendered, then
 - a. The Sentence is published to the Defender of the Bond, both parties and their advocates.
 - b. The Sentence provides the decision, reasons for the decision and any other pertinent information
 - c. All interested parties have no more than 15 days to present an appeal