



TRIBUNAL OFFICE

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INSTRUCTIONS FOR THE PROCESS OF INVALIDITY

Note to Pastor:

This instruction packet is written to be given to the Petitioner prior to completing the Petition for invalidity. If you feel the amount or style of information is inappropriate in a particular case, then please share the information contained in any format you find helpful for the Petitioner.

GENERAL INFORMATION REGARDING MARRIAGE AND INVALIDITY:

The Catholic Church, because it views marriage as a holy covenant that is entered into for life, holds that certain elements are essential to make the marriage valid and a sacramental union for baptized persons. Consequently, when a decree of invalidity is sought from a Tribunal, it means that one of the parties of the marriage believes that one or more of those elements was not present from the very beginning of the marriage. Because the Church holds so strongly to the indissolubility of marriage, it is essential to know who is validly married. Because it believes that there are both subjective and objective elements to marriage, it sometimes determines through an invalidity study, that people who have been through a wedding ceremony never contracted a valid bond.

A marriage which has been celebrated according to law enjoys the "favor of the law," and is presumed to be valid until proven otherwise. For a marriage that involves a baptized Catholic, the proper form is before a Catholic priest, deacon, or designated lay minister, and two witnesses, unless a dispensation has been obtained from the bishop. For those of other faiths, or the unbaptized, any marriage recognized as valid in civil law, or by their church laws, is also presumed to be valid. That is why a person who is not Catholic, but wishes to marry a Catholic, must initiate an invalidity process on any previous marriage in order to determine freedom to marry in the Catholic Church.

SPECIFIC INFORMATION ABOUT THE PROCESS:

GROUND [REASONS] FOR INVALIDITY:

According to Church law, there are three ways in which a marriage may be null or invalid: the presence of an impediment, lack of form or lack of consent. An impediment is a circumstance of a person or a couple that means they are not free to marry; an example of this is a previous marriage. Form is described above, and concerns the ceremonies of the wedding. Consent involves the actual vows or exchange of the agreement to marry. Defects in consent are more difficult to prove, but defective consent can mean that a marriage never existed in the canonical sense of that reality. The grounds for a process of invalidity come from either the presence of an impediment, a lack or defect of form, or a defect of consent.

Descriptions of the canonical grounds recognized as invalidating consent are:

Lack of Due Reason: Mental disease or other diagnosable mental illness. A person who lacks the use of reason is incapable of giving valid consent, permanent or transitory.

Grave Lack of Discretion of Judgment: a person must: 1) have a sufficient appreciative understanding of what a marriage relationship is and entails, 2) make a good assessment of their own ability to live marriage with their intended spouse and a good assessment as to whether their intended spouse can live marriage with them, 3) have the inner freedom to make their own choice. When one or more of these three is gravely lacking, the person lacks the necessary ability to make the sufficient judgment necessary for valid consent.

Inability to Assume the Essential Obligations of Marriage: Because of serious psychological or emotional problems such as a personality disorder, sexual deviancy or other severe anomaly, one or both parties could not take on and live out the life expected of a married person.

Inability to Assume the Essential Obligations of Marriage - Alcohol/Drugs: Under the influence of excessive abuse of alcohol or drugs, one is unable to fulfill one or more of the essential obligations of marriage.

Inability to Assume the Essential Obligations of Marriage - Homosexuality: When, because of homosexuality, a person is incapable of the heterosexual exchange which is essential in marriage and/or of the fidelity required in marriage, then one cannot give valid consent.

Ignorance: For matrimonial consent to be valid, it is necessary the parties at least be not ignorant that marriage is a permanent partnership between a man and a woman, which is ordered toward the procreation of offspring by means of some sexual cooperation.

Error: Error of person renders marriage invalid, i.e., the person I married is not the same person I intended to marry. An error about a quality of my intended partner renders marriage invalid if I principally and directly intended he/she have that quality or not have that quality when I gave my consent, i.e., I thought and intended you had this quality, but I came to see you don't. Therefore, I am in error.

Dolus [Deceit]: A person's consent is invalid if that person is deceived by fraud, intentionally inflicted in order to get that person to give consent, concerning some quality of the other party which of its very nature can seriously disturb the partnership of marriage, i.e., you deceived me so I would say yes to marrying you. You lied in word and/or deed regarding something which would seriously disturb our marriage. An example would be if the groom had gotten a vasectomy before the parties knew each other and intentionally did not tell the bride he could not have children.

Total Simulation: When giving the vows, if one or both of the parties actually do not consent in their mind and will to marry, then they have pretended marriage and are not really married.

Partial Simulation: When giving the vows, if the groom or bride in their mind and will directly excludes the permanence of marriage, and/or an openness to children and their education, and/or the fidelity which marriage requires, and/or giving those elements which form a true community of life, and/or giving those things which are necessary for the good of their spouse, then that party does not give valid consent. That party, in effect, forms an intention against one or more of the essential elements and properties of marriage.

Condition: When one or both parties make a condition for marriage so important that the entire marriage hinges on it.

Force or Fear: When a person experiences force or grave fear inflicted from outside their person, even if unintentionally inflicted, and this force or fear is such the person feels compelled to choose marriage to be rid of the force or fear, then the marriage entered into is invalid. An example of this would be the force or fear parties might experience when there is a pregnancy and parents insist there be a wedding.

Defective Convalidation: Convalidation is the process of providing the proper form of marriage when one or both of the parties is baptized Catholic, and the couple is already civilly married [e.g. by a Justice of the Peace]. Commonly called “blessing the marriage” it is in fact not a blessing but the actual statement of consent. If one or both parties do not believe they are getting married at this time, the convalidation is defective and no marriage takes place.

These “grounds” are technical categories of law, but it is important those petitioning for invalidity indicate for what reason they believe the marriage in question might be invalid. The Tribunal will determine the exact grounds after viewing the evidence, and then the Parties are notified with an opportunity to respond.

EFFECTS ON CHILDREN:

If children are born to a couple in a civil marriage, they are legitimate according to civil law, and a decree of invalidity by a church tribunal does not affect them. A decree of invalidity deals only with the sacramental nature of the bond. A Tribunal does not accept a Petition for invalidity until a divorce is final, and all previous responsibilities toward the former spouse and children are acknowledged. A declaration of invalidity has no civil or ecclesial effects on any children of the Parties.

RIGHTS OF RESPONDENT:

It is a requirement of Canon Law the former spouse be notified when a Petition is submitted for a declaration of invalidity. The Respondent has the opportunity to testify and present witnesses, and to be kept informed of the canonical steps in the process, up to and including the completion of the case. The Respondent has the right to appeal the decision to a higher tribunal, if further evidence is produced on which to base the appeal.

COMPETENCE:

Once a case is submitted, the Tribunal must determine if it has the right to conduct the study. A study can always be conducted in the diocese where the marriage took place, in the diocese where the Respondent lives, and in the diocese where the Petitioner lives. These are the usual places where an invalidity study can be conducted. This is why it is essential that documents and addresses be complete when the Petition is submitted to the Tribunal. If they are missing, unnecessary delays take place.

CONFIDENTIALITY:

The information gathered for this study is privileged, and requires confidentiality by all concerned. Consequently the materials gathered are open only to the officials of the Tribunal; as required by Church law, the Parties also have a right to come to the Tribunal to learn the issues raised in the testimony given by the other Party and the witnesses. The judge can decree that a certain piece of information not be made known to anyone as long as the right of defense of the marriage remains intact. (C. 1598). Records and correspondence become part of diocesan files, and as such are the sole property of the Diocese of Rapid City. They will be safeguarded as confidential information.

INSTRUCTIONS TO THE PETITIONER:

RESPONDENT:

Your former spouse, the Respondent, needs to be contact by you. Cases where both the Petitioner and the Respondent participate, both supplying witnesses, tend to develop and process at a more efficient rate. Please contact your former spouse and tell them we will be sending a questionnaire to them with an encouragement to participate in the process. When we write to them, we will assume you have done so, unless you tell us otherwise.

WITNESSES:

Besides your parents and those of your former spouse, we ask you name at least four witnesses who can testify concerning the circumstances of your former marriage. It is helpful if they knew you prior to the marriage or in its early years, if they are not all relatives, and if they knew both you and the Respondent. Please contact all of them, including the parents of the Respondent, and tell them we will be sending questionnaires to them. When we write to them **we will assume you have done so** unless you tell us otherwise.

Witnesses are asked to provide any information they have regarding the same issues which you and the Respondent are asked to include. They can choose to do so in writing or through an interview under certain circumstances.

DOCUMENTATION:

With your completed Petition, please submit the following documents:

- 1.) Baptismal certificates for both you and your former spouse, or if not Catholic, at least an affidavit confirming baptism.
- 2.) Certificate of marriage.
- 3.) Certificate of divorce decree [certified].

[If there have been successive marriages, please include the above documentation for each marriage.]

COSTS OF AN INVALIDITY STUDY:

The Diocese of Rapid City waives all processing fees in an effort to remove any financial obstacle or hardship to those requesting an invalidity study. At the end of the process, the Petitioner may want to consider a freewill donation to offset the cost to the diocese. The diocese covers the costs incurred through the annual Stewardship Appeal. Some cases require consultation with a psychological expert. The expense of the consultation would normally be the responsibility of the Petitioner, which would be discussed with you as the study progresses, but the inability of the Petitioner to cover this expense will not affect the due process of the case.

DURATION OF PROCESS:

The time involved in processing a Petition for invalidity varies greatly, depending on the amount of evidence available, promptness of witness response, ease in contacting the Respondent, need for psychological consultation, etc. Normally, the process takes about fourteen to eighteen months from the time the Petition is received in the Tribunal office. **Until the process is completed, you are not free to make plans or set a date for a wedding in the Church.** Petitions are processed in the order received, and according to the completion of the gathering of the evidence.

OVERVIEW OF THE PROCESS:

The following is a brief overview of the process involved in studying a case submitted by a Petitioner seeking a Declaration of Invalidity.

- 1) The process is ordinarily started in the parish, with the person desiring the study obtaining the necessary forms and instruction from the pastor or one designated by him. Since everyone has a right by church law to have his/her marriage studied for possible invalidity, a Petitioner may initiate the process at the diocesan level, and be advised on how to proceed.
- 2) Once a Petition is submitted to the Tribunal, a staff member reviews it to see if the Tribunal has jurisdiction [competence], and if the case appears to have adequate grounds to begin the process. It is normally accepted or rejected within a month, unless a consent for competence is required.
- 3) When the case has been accepted, you and your former spouse are notified, along with the Pastor who submitted the case. The Respondent has twenty working days to respond to the alleged grounds and give testimony. After the allotted time-frame, if the grounds have not been challenged by the Respondent, the issues are joined on the alleged grounds.
- 4) Letters are sent to the witnesses ten working days after the issues are joined. It is expected you have told them they will be asked for testimony. When the written testimony is received from several witnesses, a member of the staff reviews it for completeness. This step is called a Second Review in this Tribunal. After this step, letters are sent to both the Petitioner and Respondent asking him/her to come in for a personal interview.
- 5) If the case requires the consultation of an expert, it is given to a Court appointed professional for review and assessment. This person may recommend a psychological interview or further gathering of data.
- 6) The Tribunal meets to discuss the case after which the Parties are notified of the grounds on which the study is being conducted and the names of the witnesses who responded to the questionnaire sent them. Either Party is invited to come to the Tribunal office within a limited period of time, and be made aware of the issues raised in the testimony (c. 1598). If the Petitioner and Respondent have signed a mandate for a procurator/advocate, this person can fulfill this step of the law for them. The Parties may also have waived this right by relying on the justice of the Court. (c. 1606). Most Parties rely on the justice of the court for this step of the process, because of time and travel restrictions.
- 7) The defender of the bond of marriage writes his observations as to whether invalidity has been adequately proven, and procedures correctly followed. The judge writes the final decision, called a sentence. The Parties are notified the process is complete at this Tribunal, and a copy of the definitive sentence is sent to them indicating the grounds on which the final decision is based. The Parties are given fifteen working days to contact the Tribunal if either of them wishes to file a personal appeal. If no personal appeal is filed, the Parties are notified of the conclusion of the case. The Parties are free to marry, unless a temporary prohibition has been attached to the final decree. In this case the Pastor is notified, as well as the Parties. Sometimes there is not sufficient evidence to support the invalidity of the marriage. In that case, both Parties are notified of the negative decision and advised of their right to appeal to a higher Tribunal.

We realize that this formal process requires you recall, reflect upon and articulate past experiences which are painful and emotionally charged. We ask you do so as clearly and truthfully as you can. We will treat all information shared with respect and ask God that the process may bring you healing and peace of mind and heart.