

THE FORMAL PROCESS FOR A DECLARATION OF INVALIDITY OF MARRIAGE

Introduction

This document is written for persons who have a formal marriage case pending before the Tribunal of the Diocese of Pueblo. This document lists only the most important stages of the formal process. The intent of this document is to inform the Parties about their rights and responsibilities in the formal process so that they can clearly understand what they are undertaking. This document is designed to help the Parties become aware of the stages of the formal process so that they can actively, directly and personally participate in the proceedings.

Declaration of Invalidity, a Definition and Values

A Declaration of Invalidity, popularly called an annulment, is a decision by a Church Court that morally certain proof is had that the marriage in question is not valid, that is, that it was entered into invalidly. It is a decision that at the time of the wedding ceremony there was a radical defect present that rendered the consent furnished inefficacious, that is, invalid. Thus, a Declaration of Invalidity is not a Church divorce for a marriage that turned out badly. It is not a decision allowing persons to receive Holy Communion nor is it a statement of forgiveness or blame. The primary purpose of the formal process is to provide a forum in which a person may seek to vindicate their right to marry in the Catholic Church. Some persons are offended that the process for obtaining a Declaration of Invalidity is conducted in a judicial setting. Nevertheless, it is conducted in a judicial setting to assure fairness and objectivity.

The Catholic Church seeks to uphold two values in this process, namely, the dignity of the human person and faithfulness to the teachings of Jesus about divorce and remarriage. The Catholic Church holds that when two persons make the matrimonial pledge of “for better for worse, until death,” that the couple has given their word. And the Church holds the bride and groom to their word. For the Church holds that most persons have the ability to make the permanent commitment of marriage. In this the dignity of the human person, and their right to make choices, is upheld. Also the Catholic Church seeks to remain faithful to the teachings of Jesus about marriage and divorce.

The Catholic Church holds that all marriages, even of non-Catholics, are more than the mere public witnessing of the private consent of the Parties, to be entered into and broken at will. Therefore, the Catholic Church holds that all marriages, even of non-Catholics, are valid until the contrary is proven. The burden of proving the invalidity of a marriage rests with the Petitioner, not the Tribunal.

Personnel

The person who actively seeks a Declaration of Invalidity is termed the Petitioner. The former spouse, the other Party, is termed the Respondent. An Advocate is the person appointed by the Petitioner or the Respondent to assist that Party in presenting and arguing their case. Any properly authorized cleric or lay person of the Diocese of Pueblo may function as an Advocate before the Tribunal. The Tribunal is run by the Judicial Vicar. Other personnel in the Tribunal include associate Judges, Defenders of the Bond, Notaries and Auditors. The Defender of the Bond is the person who proposes everything which can be reasonably brought forth in favor of the validity of the marriage and against the granting of a Declaration of Invalidity.

Acceptance of the Petition

When a petition for a Declaration of Invalidity has been received and the Tribunal has securely established its jurisdiction, and the case appears to have merit, then the Tribunal commits itself to investigate the case. The Petitioner and Advocate are then notified that the case has been formally accepted for investigation. The acceptance of a case for investigation is not a guarantee that a Declaration of Invalidity will be granted. Rather the acceptance of a case is a statement that a formal trial will be conducted. Included with the notification letter of acceptance are two other items: 1) this document entitled *The Formal Process for a Declaration of Invalidity of Marriage*; 2) the Acknowledgment of Petitioner form. The Petitioner should answer the questions on the Acknowledgment of Petitioner form and return it to the Tribunal immediately.

Citation of the Respondent

On the same day that the Tribunal formally accepts the case for adjudication, it writes to the former spouse. Included with the citation letter are four other items: 1) the Acknowledgment of Respondent form listing, among other items, the court personnel and the alleged ground(s) of invalidity; 2) an outline form for the Respondent to follow in composing a written declaration; 3) this document entitled *The Formal Process for a Declaration of Invalidity of Marriage*; 4) a pamphlet entitled *Why the Church is Granting More Annulments*. The cooperation of the Respondent is asked for, either by a personal interview or by a written statement. Frequently, the Respondent elects not to cooperate in the process. Sometimes the Respondent participates in the process and actively seeks to oppose the Petitioner's claim that the marriage is invalid. At other times, the Respondent is just as eager to obtain a Declaration of Invalidity as the Petitioner. The Respondent is afforded the right to offer names and addresses of knowledgeable and willing witnesses in support of their claims in the process.

Once the Respondent is properly cited, the case is "locked in" and becomes the property of the Tribunal before which it was lodged. The Tribunal actively seeks to protect the rights of all Respondents. For this reason the Respondent must always be cited and notified at certain critical stages of the process.

Joinder of Issue

The Joinder of Issue is held fifteen days after the Citation of the Respondent. The Joinder of Issue is the stage at which the Judge sets the grounds to be investigated. The setting of the grounds is based upon the petitions and responses of the Parties in the case. The grounds for which a formal trial for a Declaration of Invalidity can be conducted are many and varied. Sometimes Petitioners and Advocate(s) propose many, yet incompatible, grounds. It is the duty of the Judge to determine the precise grounds, which might be applicable and worth adjudicating in the case. Both Parties and Advocate(s) are notified of the Joinder of Issue.

Instruction of the Case

Ten working days after the Joinder of Issue, the Judge decrees that the Instruction of the Case is to begin. This is the stage at which the testimonies of the witnesses and other proofs are gathered by the Tribunal. Among the most important sources of proof in a marriage case is the testimony of knowledgeable and willing witnesses. The Tribunal directly contacts the witnesses who have been named by the Parties. They are given two weeks to furnish testimony either in person, at the Tribunal, or by written affidavit. Full and adequate witness testimony is absolutely essential in a marriage case. Delays are frequently encountered at this stage. Sometimes witnesses claim they

never received the citation for testimony from the Tribunal. Some witnesses supply little or no real information. Sometimes witnesses write mere letters of recommendation instead of narrating the facts. Some witnesses fail to have their written affidavits properly notarized. Sometimes witnesses claim to have sent a written affidavit to the Tribunal when, in fact, they have not done so. Some witnesses just fail to cooperate.

When notified that the Instruction of the Case has begun, the best way for the Parties to avoid delays is to contact their witnesses immediately to insure that they cooperate fully with the Tribunal's request for testimony. Since the burden of proof rests with the Petitioner and not the Tribunal, the Parties should urge their witnesses to come to the Tribunal in person to provide testimony if possible. However, if a witness is not able to come personally to the Tribunal, then the Parties should tell the witness to follow the outline form provided for them and to be detailed and lengthy in their written testimony and to give examples.

A good witness is a person who is knowledgeable about the personalities of the Parties, the decision to marry, the courtship and the subsequent history of the marriage. Frequently one's parents and brothers and sisters are good witnesses because they usually know about all the necessary areas.

Interview of the Petitioner

At some time during the Instruction of the Case a personal interview between the Judge and the Petitioner is held. This interview, or formal declaration, is conducted in privacy. It is taped and later transcribed. This formal declaration of the Petitioner is one of the sources of proof in formal marriage cases. This interview lasts about twenty or thirty minutes. Some Petitioners are a little nervous at this interview. Some Petitioners are offended at what they feel is a mere rehashing of what they wrote in their written marital history. Nevertheless, this interview is never a waste of time, for the information gained at this interview can be critical and decisive. At the end of the interview the Petitioner is free to ask any questions about the progress of the case.

Evaluation by a Psychological Expert

When Canon Law requires it, after all of the testimonies and interviews are completed, the case is sent to a Court appointed psychological expert for evaluation. The Petitioner is liable for the cost of this evaluation, which is usually \$150.00. The report of the expert is considered an important source of proof in marriage cases.

Publication of the Acts

When all of the evidence seems to be in, the Judge issues the Decree of the Publication of the Acts and notifies the Parties and the Advocate(s). At this stage of the process the Parties may review, at the Tribunal, the materials in the case file. This is not an absolute right. It is subject to the procedures and limitations of Canon Law. The Parties are notified that they have ten working days to inform the Tribunal that they wish to inspect the acts. At the time of Inspection the Parties and the Advocate(s) may propose new and additional proofs. The case file is always open to the legitimately mandated Advocate(s) of the Parties.

Decree of Conclusion and Opening of the Discussion and Definitive Sentence

After the time for the inspection of the acts has lapsed, the Judge issues the Decree of Conclusion and Opening of the Discussion, thus closing the case to further evidence. The Parties and

Advocate(s) are notified of this decree. During this time the Defender of the Bond presents a written argument, based upon the law and facts of the case, against the granting of a Declaration of Invalidity. All are notified that the Judge hopes to issue a decision in the case within the next thirty days. The Judge then writes the Definitive Sentence. The Definitive Sentence is a document containing the reasons, based upon the law and the facts, for the decision in the case. In the Definitive Sentence the Judge decides whether morally certain proof of the invalidity of the marriage is had on the grounds set at the Joinder of Issue. If the Judge rules in the affirmative to any one of the grounds, then he has ruled in favor of granting a Declaration of Invalidity. If the Judge rules in the negative to all of the grounds, then he has ruled against the granting of a Declaration of Invalidity. The Parties and Advocate(s) are notified of the decision and their rights of appeal

Automatic Appeal

If an affirmative decision is granted by the Tribunal of Pueblo, the case must be automatically sent to the Metropolitan Tribunal of the Archdiocese of Denver for review. If the Metropolitan Tribunal grants a second conforming affirmative decision, thus upholding the decision of the Tribunal of Pueblo, then the Declaration of Invalidity can be issued. The Parties and Advocate(s) will then be notified.

Time Limits

Canon Law determines that the time limit for a formal marriage case only begins when the Tribunal has formally accepted the case for investigation. Canon Law determines that formal cases should be settled within one year at the local Tribunal and six months at the appellate Tribunal. Most of our cases are completed within these time limits. Some cases do take longer.

Other Actions

Vetitum Sometimes, even if a Declaration of Invalidity is granted, the Judge will place a prohibition, that is, a *vetitum*, on one or both Parties preventing them from entering into another marriage in the Catholic Church until certain conditions have been fulfilled. The Party is notified of these conditions. A Party who is under a prohibition cannot set a date or arrange for a new marriage until all of the conditions for lifting the prohibition have been fulfilled.

Renunciation Sometimes the Petitioner is not able to produce the evidence necessary to prove the invalidity of the marriage. Instead of issuing a negative definitive sentence, the Judge may ask the Petitioner to withdraw their case. This has the advantage that at some future date additional evidence might be forthcoming, which would allow the Petitioner to reopen the case.

Abatement Sometimes the Petitioner loses interest in pursuing their case or sometimes the Petitioner refuses to cooperate with the Tribunal. In these situations, the Judge can issue a Decree of Abatement, which relieves the Tribunal of further investigating the case and issuing a definitive sentence. The case is then closed and placed into the archives of the Tribunal.

Future Weddings

Only after two concordant affirmative decisions have been granted, and a Declaration of Invalidity is issued, may the Parties plan a new marriage. No priest may promise a date, nor may any couple set or arrange a date for a new marriage before receiving the final decree.