



## **THE METROPOLITAN TRIBUNAL**

### **ARCHDIOCESE OF BOSTON**

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## **DECLARATION OF NULLITY OF MARRIAGE INFORMATION ABOUT THE PROCESS**

2016

## WHAT IS MARRIAGE?

The Catholic Church believes that marriage is an exclusive and permanent partnership between a man and a woman whose goal is for the good of the spouses and the procreation and education of children.

For a man and a woman, both of whom have been baptized, a valid marriage is also a Sacrament.

The Church believes that every valid sacramental marriage that has been consummated is indissoluble. This is the God's law according to the evidence found in the Scriptures and the Law of the Church.

Although not every marriage is a Sacrament, all marriages - or at least every marriage celebrated for the first time between the parties - are presumed valid. The good of all concerned (spouses, children, family, society, Church, etc.), demand that presumption.

Every marriage is presumed to be valid, whether it is contracted between Catholics or non-Catholics. But this assumption may be incorrect and marriage itself, if it contains a defect since its inception, may eventually be declared invalid. This declaration of invalidity made by the Church is what is commonly called Annulment.

## WHAT IS A CHURCH TRIBUNAL?

Church law provides for the existence of a Tribunal in every diocese in the world. The Office of the Tribunal is the judicial branch of the Archdiocese and is responsible for the administration of justice. One of the primary functions of the Tribunal is examining a request for an ecclesiastical declaration of nullity of marriage. This involves research and interpretation of facts that may lead to a possible declaration of nullity of a marriage in particular. The Tribunal of the Archdiocese of Boston, under the leadership of Archbishop, is supervised by his delegate, the Judicial Vicar. This, together with an experienced and specially trained team formed by priests, religious and laity, offers assistance to those who want the Church to examine their case in order to determine whether there is the possibility of declaring the nullity of their marriage.

## WHAT DOES THE STUDY CONSIST OF?

The study consists of an investigation to determine whether or not a reason (cause/ground) acceptable by the law of the Church might have prevented the marriage celebrated to be valid. Specialists in Canon Law lead a process, which includes interviews, witnesses and, sometimes, the intervention of a Court Expert, to evaluate whether that particular reason (cause/ground) of invalidity was present at the time of marriage and vitiated the consent of the spouses. The Judges' assessment is based on moral certainty.

Guidelines and directives used by the Tribunal are found in the teachings of the Gospel of Jesus Christ and the law of the Catholic Church. The Tribunal's work tends toward that end by the diligent protection of the rights of a man and a woman in a particular marriage, as well as the rights of the Church that Jesus Christ has entrusted for the protection and care of the Sacrament of Matrimony. That is why the Tribunal *holds the presumption of validity of marriage until otherwise (invalidity) is proven* after evaluating the marital history, observing the existence of a cause, and assessing the evidence presented.

## HOW DO YOU BEGIN A STUDY?

Either spouse can begin a study of their case, making first contact with a priest, deacon or pastoral associate (preferably in the home parish), who, as sponsor, will help the person called “the Petitioner” to complete a form entitled "Request for Tribunal Study." After completing this form, it must be signed by the Petitioner and the Sponsor (the person of the parish who helped the Petitioner) who will submit that request to the Tribunal for a preliminary assessment.

The Boston Tribunal can consider the case if the marriage was celebrated in the Archdiocese of Boston or at least one of the parties lives within the territory of the Archdiocese of Boston.

## DOES THE EX - SPOUSE HAVE TO BE CONTACTED?

Yes. Since in the law it is mandatory, please take into account that the Tribunal will formally contact your ex-spouse.

Once the Tribunal accepts the request to assess the case, the other spouse, called “the Respondent”, must be formally notified about the existence of the request. Our office sends the notification. She/he will be offered the opportunity to present their own history of marriage, and also present witnesses if he/she chooses. The law of the Church requires that the rights of both spouses will be equally protected.

It is often beneficial if the petitioning party informs the other party (called the Respondent) about the intention to submit the request. Informing the other party, even before filing the case, can help him/her understand in advance the reason for the process and not misinterpret the scope of this presentation.

The Petitioner must provide the current and complete address of the other party. If it is not possible to know the current address of the former spouse, notify your Sponsor. You or your Sponsor can start an Internet search. Should it be unsuccessful, you must provide the address of a relative or acquaintance through which this person may be contacted.

## WITNESSES ARE NECESSARY TOO?

Your statement must be corroborated by witnesses. Witnesses are required by the Church’s law to assist the Tribunal to have a thorough understanding of each spouse, the marriage and the reasons for its failure. Before presenting the process, witnesses should be asked if they are willing to cooperate with the process by offering information in writing according to the guidelines that the same Tribunal will mail to them. Witnesses should be warned that the Tribunal will contact and ask them to participate.

## CAN YOU PRESENT SPECIAL WITNESSES?

Certain professionals - doctors, psychiatrists, psychologists, counselors, priests, ministers, rabbis, etc. - who were consulted or helped either spouse, or both, before or during marriage, are *qualified witnesses*. If the party authorizes the lifting of professional confidentiality through a special form that will be provided by the Tribunal, these professionals can be asked to provide a confidential report, which generally is of great value for the study of the case.

In some cases the intervention of an *expert* may be necessary. An assessment or evaluation by a Court Expert can introduce additional information or serve as a professional opinion when evaluating the case. This practice is usually followed for marriages of long duration or where the evidence of the witnesses is inconclusive.

## ARE THERE DIFFERENT TYPES OF PROCESSES?

There are different types of processes. Some of them are reserved for the Pope who is the only one who can dissolve a marriage. Others may be determined by the Bishop or by the Tribunal.

Until recently, the majority of the processes not reserved for the Pope were handled through ordinary proceedings by the Tribunal. His Holiness Pope Francis, on December 8, 2015, promulgated the *motu proprio Mitis Iudex Dominus Iesus*, introducing new laws which amended part of the marriage procedural law. An abbreviated process was thus created for assessing cases of matrimonial nullity applicable to marriage histories where, given the obviousness of the facts, the visible existence of a degree of invalidity, based on the consent of both parties, the ordinary process could be avoided. This process, however, should not be used simply because the facts may seem to be easily proven or because people want to plan a wedding.

The new abbreviated process can only be used if the following conditions exist:

- The reason (cause) of the nullity of marriage appears to be clear and obvious according to Canon Law (for example a marriage celebrated to give/obtain immigration status; a short marriage of a few months in which a party voluntarily excludes an essential element such as fidelity, etc.)
- The other party (former spouse) of the marriage (called Respondent) must have access to the request (Libellus) and understand that through this petition it is requested that the marriage contracted by both may be declared invalid. He/she must sign the formal request stating that he/she agrees with the views expressed in it, or at least is not opposed to the request.
- The facts of the marital history, that give rise to degrees of invalidity and that can be treated by the briefer process should be strengthened by adequate testimony and/or authentic documents.

If these three conditions are not present, the briefer process cannot be applied and the case should be tried in the ordinary process. That is why, to present the case to be tried in the briefer process without these three conditions, will result only in a loss of time since the normal application will be returned to be completed in the regular process. Therefore, the application form for a briefer process can be presented only if you and your Sponsor (priest, deacon or pastoral associate) are confident that the case can qualify for this process because it has all the conditions listed above. Otherwise, you should ask your Sponsor to help you complete the form to initiate a regular process.

Note that the Tribunal reserves the final decision whether your case qualifies or not for the briefer process. If your case does not qualify for this process, it will be dealt with in the ordinary process.

## HOW IS THE ASSESSMENT PROCEDURE CARRIED FORWARD?

If the case is treated in the briefer process, the Bishop, who is sole judge with two advisers, can rule after all documentation and probative material is evaluated.

If the case is tried in the ordinary process, the appointing of a tribunal is required. Officers assigned to the case will be appointed: lawyers for the parties, the Defender of the Bond - who safeguards the welfare of marriage and guarantees that the rights of both parties are protected - and the judge or judges who will form the college. There will be an instruction during which the other party shall be

notified and eventually receive his/her testimony as well as the witnesses. When all the information deemed necessary has been gathered, the Judges of the Tribunal will make an assessment aimed at whether the case is ready to proceed to a hearing and discussion of the case. A date will then be set for the hearing. The summons to appear before the Tribunal shall be given not less than two weeks in advance. The cases will be heard in the order they were received, at the earliest possible date.

After the hearing, the Defender of the Bond and lawyers offer their arguments concerning the case. After reviewing all the material the Judges render a decision.

After the Papal *Mitis Iudex* provisions, enacted on December 8, 2016, affirmative decisions given by the Tribunal that were not appealed, become final.

The Defender of the Bond and the parties can appeal. If an appeal is made then the case will pass to a Second Instance. The appeal is heard by another Tribunal.

### **DOES THE ECCLESIASTICAL DECLARATION OF NULLITY HAVE CIVIL EFFECTS?**

The declaration of invalidity issued by the Church has no civil effects. It does not affect in any way the legitimacy of children, property rights, inheritance rights, rights to the name, etc. An Ecclesiastical Declaration of Nullity is a decision of the Catholic Church stating that a particular union which supposedly was initiated in good faith by the parties involved, in fact was an invalid union according to what the Church defines as marriage. This study does not attempt in any way impute guilt or punish people.

### **IS A NEW MARRIAGE IN THE CHURCH ALLOWED?**

If the nullity has been declared the parties can start the usual preparations for marriage in the Catholic Church unless a restriction was imposed on either of them.

In some cases, a marriage can be declared invalid but restrictions may be imposed on one or both parties to contract a new marriage. This restriction can be caused by behaviors manifested in the first marriage that are harmful to the parties or which are incompatible with the institution of marriage. If, according to the opinion of the Judges, the causes that were present in the marriage declared persist or there is a risk that the party can be re-exposed to damage, a second marriage may not be allowed until it is proven that the causes which invalidated the first marriage have been remedied and / or the risk of harm is gone.

### **CAN WEDDING PLANS BE MADE BEFORE OBTAINING AN AFFIRMATIVE BY THE TRIBUNAL?**

Please note that permission to remarry in the Catholic Church cannot be guaranteed before obtaining a judgment that declares the nullity of the marriage that was evaluated. Only a final affirmative decision with no restrictions, enables the possibility of a second marriage.

*No priest or deacon is authorized to provide even a tentative date for the celebration of a future marriage in the Catholic Church until the process has been fully completed.* The Tribunal is not liable for promises or arbitrary guarantees made by a priest, deacon, religious or layperson.

### **HOW LONG DOES THE PROCESS TAKE?**

Because of the various factors involved, it is impossible to predict the exact duration of the process. Not all people and stories are the same. Personal, geographic, and social factors can influence the substantiation of the process.

If the case is tried in the briefer process, the Bishop, who is the judge in the case, may give judgment as soon as all documents and evidence which must accompany it are evaluated.

In the ordinary process, because of its greater complexity, various factors (personal, cultural, geographical, etc.) can affect the duration thereof. With the full cooperation of all those who are necessary, a tentative average duration of an ordinary process should be about 12 months. This time may be extended when one of the parties or witnesses reside outside the country since in such cases the help of an international Tribunal will be sought to contact them, or when the gathering of testimony is delayed by the witness participation or there is difficulty in obtaining necessary documents. The full cooperation of the Petitioner is always necessary, especially when a procedure is requested by the Tribunal.

Our Tribunal will proceed in all cases as quickly, fairly and efficiently as possible.

*By law of the Church, no priest is allowed to set a date for a new marriage until the invalidity has been declared.*

### **WHAT IS THE COST FOR THE SERVICES OF THE TRIBUNAL?**

By decision of the Archbishop, the total cost of these processes is assumed by the Archdiocese and resolved through income earned by the Annual Catholic Appeal. Sometimes, however, if the intervention of an external expert becomes necessary for the evaluation of the case, the Petitioner may incur in some expense (may need to reimburse the Court Expert fees).

At the end of the process an envelope will be provided should the Petitioner want to contribute to the Catholic Appeal, thus helping to keep this service free of charge for anyone who would like to be benefited with the Tribunal services.

If you have more questions you can approach a priest, deacon or pastoral associate. You can also call directly our office (617-746-5900) for information. It will be our pleasure to take your call. We speak Spanish.

You can also consult our website at: <http://www.bostoncatholic.org/Tribunal.aspx>