

# Petitioning for a Declaration of Nullity



Archdiocese of Anchorage-Juneau Tribunal  
225 Cordova Street  
Anchorage, AK 99501  
(907) 297-7724

## THE PURPOSE OF THIS BOOKLET

Most likely, you are reading this booklet because you or someone you love has experienced a divorce and have been told that a Declaration of Nullity, commonly called an “annulment”, is necessary. You probably have lots of questions. We understand.

While there may be necessary divorces, there are no good ones. Sometimes, through no fault of their own, some persons find themselves experiencing the pain of a civil divorce. Through parish ministries, archdiocesan programs, and the Tribunal, the Church seeks to assist them in healing from the emotional and spiritual pain that often results from the breakdown of a marriage so they may rise up and begin anew.

Healing takes time. Once the emotional rollercoaster of divorce subsides, life can take on a semblance of normalcy. Eventually, it makes sense to petition the Tribunal to investigate the previous marriage to obtain a Declaration of Nullity.

To that end, this booklet is intended to:

1. Help you understand what exactly a Declaration of Nullity is,
2. Explain the process of obtaining a Declaration of Nullity, and
3. Answer many common questions about Declarations of Nullity.

## WHAT IS A DECLARATION OF NULLITY?

When asked, the Tribunal conducts an investigation of a marriage according to the Code of Canon Law, the internal legal code of the Church. If it finds the marriage is lacking the necessary qualities of a valid marriage, it will promulgate a Decree of Nullity (commonly called an “annulment”). Such declarations make it possible for a person who has been divorced to seek another marriage in the Catholic Church. It may also assist those who are already remarried civilly, as well as Catholics who are simply divorced and are seeking clarification of their status within the Church.

## WHAT DO YOU MEAN BY SAYING A MARRIAGE WAS OR WASN'T ‘VALID’?

### A quick primer on what the Church believes about marriage -

**The Church holds all marriages in particularly high regard.** (Including those of non-Catholics) Marriage is the total gift of self to the other for the building up of the Church and/or society. As described in the 1983 Code of Canon Law, “the marriage covenant, by which a man and a woman establish between themselves a partnership of their whole life, and which of its own very nature is ordered to the well-being of the spouses and to the procreation and upbringing of children, has, between the baptized, been raised by Christ the Lord to the dignity of a sacrament.”

Because the Church holds marriage in such high regard, we assume all marriages are valid until proven otherwise. Thus, **marriage enjoys the favor of law**, (c. 1060). The validity of a marriage must be upheld until the contrary is proven.

**The essential properties of every marriage are unity and indissolubility.** This applies to all marriages whether in the Church between the baptized or in any other situation. These properties of unity and indissolubility acquire a distinctive firmness in marriages between baptized Christians.

**How is a valid marriage brought about?** A marriage is brought into being by the lawfully manifested consent of persons who are legally capable of giving such consent. This is usually done through the exchange of your marriage vows.

**So valid consent makes a valid marriage?** Absolutely! Only the parties to the marriage can manifest this consent. This consent cannot be supplied by any human power. Namely, no one can speak your vows for you.

**What exactly do you mean by ‘consent’?** Matrimonial consent is an **act of the will** by which a man and a woman by an irrevocable covenant mutually give and accept one another for the purpose of establishing a marriage. You have to be capable of giving consent. You have to know what you are doing, and you have to freely choose to do it.

## TWO KINDS OF CASES – INFORMAL AND FORMAL

In some cases, it is obvious that the marriage was lacking in some respect, either due to an impediment or another circumstance. This would be an **informal case**, where we only need to establish the facts of the case, usually through highly reliable documents, and a Decree of Nullity is issued.

In other cases, everything might look fine on the surface. Yet, lurking under the surface something was either lacking or present that makes one’s consent invalid. In these cases, we have to dig deeper, gathering testimony and other evidence. This is called a **formal case**. Formal cases are used for ceremonies where one or both parties are Catholic as well as for ceremonies between Christians of other traditions and unbaptized persons. In each instance, the case is judged on its own merits. If after investigating the case, the judge finds that something essential was lacking or that there was something present that should not have been there, he will declare the marriage null. Some common reasons for granting a Declaration of Nullity are listed on pages 6-8.

## HOW DOES THE PROCESS FOR AN INFORMAL CASE WORK?

In some marriages there are readily established circumstances present at the time of consent that make a marriage null. Most common among these are situations are:

- an attempted marriage of someone not of legal age to marry;
- the marriage of a baptized Catholic that was celebrated outside the Church (Lack of Canonical Form);
- one of the parties had a previous marriage (Ligamen);
- a marriage between two unbaptized persons where later one becomes baptized, and the unbaptized party abandons the marriage (Pauline Privilege)

When such circumstances exist, there is a possibility of an administrative or documentary process. This process does not involve an in-depth investigation of the marriage relationship. Rather, it is based on documents and other reliable sources that establish the facts, including

- the petition form,
- a photocopy of the marriage license,
- a photocopy of the divorce decree,
- a recent copy the baptismal certificates of the parties (if possible.)

Once the petition is submitted to the Tribunal, one's former spouse is notified and invited to participate with a respond for or deposition. The nice thing about documentary processes is that they normally take less time. The pastoral minister assisting you should be able to help you determine if your situation can be resolved with a documentary case.

## HOW DOES THE PROCESS FOR A FORMAL CASE WORK?

The process for a formal case is followed according to Church law so that the rights of all involved will be protected. At all stages, the Tribunal staff is available to help you and answer any questions you may have. Each case goes through the following stages:

- The petition is prepared and submitted to the Tribunal.
- The petition is accepted by the Tribunal, and the case begins.
- The evidence is gathered. This is called "Informing the Case."
- The testimony and documents of the case are made known to the parties. Called the "Publication of the Acts."
- The parties have a chance to review the testimony and documents and make comments. Called the "Reading of the Acts."
- The investigation of the facts is concluded. "The Conclusion of the Case."
- The Defender of the Bond reviews the case and gives his/her opinion.
- The Tribunal renders a decision and the decision is made known to the parties.
- The case is recorded and notifications sent.

### I. Preparing Your Petition

All formal cases take time, some more than others. The process begins by filling out the Petition Form and collecting the necessary documents. Preparing your petition well can make a big difference in how expeditiously the Tribunal is able to move it through the necessary steps. The following should help you as you begin.

#### **Working with a pastoral minister in the parish –**

In most parishes, a priest, deacon, or other pastoral minister is available to help you prepare your petition. They are familiar with the process and can help guide you through the initial steps.

#### **Working directly with the Tribunal -**

In some cases, and for good reasons, you may prefer not to prepare your case through the parish and would rather work directly with the Tribunal staff. While Tribunal staff time is limited, every effort will be made to assist you.

## **Requesting an Advocate / Procurator -**

At present there are a modest number of trained Advocates and Procurators who may be able to assist you in preparing your case. To request an Advocate, contact the Tribunal directly. An advocate/procurator is a person with special training in marriage law who is there to assist you throughout the process and to make sure that your rights are protected.

## **Tips for preparing a good petition –**

- **If you wish, begin with prayer.** You may wish to use the prayer on the back page of this booklet or one from your own faith tradition.
- **Do your homework.** Look over the Petition Form and note the nature of the information you are asked to provide. Prepare yourself mentally and spiritually to answer them well. Since you are the one making the petition, you will be the “Petitioner.” Your former spouse will be the “Respondent.”
- **If prudent, notify your former spouse that you are beginning the process.** Your former spouse (“The Respondent”) can be very helpful. Remember that the purpose of this process is not to establish blame on either party, but to establish the facts of the case. A declaration of nullity is also to their benefit should they wish to marry again in the Catholic Church.
- **Concentrate on what happened before, during and immediately after the wedding ceremony.** The Tribunal will be looking at what was going on at the moment you exchanged your vows with your former spouse.
- **Be as thorough as possible** when filling out the Petition. Avoid “yes or no” answers. This will assist the judge in determining the merits of your case from the outset. If there is not enough there to indicate a good case, the judge will send it back to you with a request for more information. This can lengthen the process by some weeks.
- **Indicate specific grounds and the reasons you believe they apply to your case.** Using the list on pages 6-8 of grounds commonly cited by people who petition the Tribunal, list each ground that you believe applies to your case, along with a detailed paragraph explaining why. Be as detailed as possible. Use examples of motivations and events that were experienced before, during and after the wedding ceremony.
- **Choose good, helpful witnesses.** There are two kinds of witnesses, character witnesses and substantive witnesses. A character witness is someone who can vouch for your credibility and good character. A substantive witness is someone who can speak to the facts of your case. A good substantive witness is someone who knew you before, during and after the wedding in question. Your parents, childhood friends, best man and maid of honor typically make very good substantive witnesses. If your former spouse chooses to participate, he/she will also have the opportunity to provide witnesses. In extreme cases, if there are no witnesses, the case may stop. If there will be no substantive witnesses, and the Tribunal must rely solely on your testimony, it is especially important to provide one or more character witnesses.
- **Contact your witnesses and have them agree to cooperate beforehand.** Lack of response from your witnesses is the main cause of delay of a case. While you cannot coach them on what they are to say, get their assurances that they will respond in a timely manner. If they do not respond, your case can be delayed for months.
- **Provide all the necessary documents with the Petition Form.** With your petition, you are required to provide a photocopy of the marriage license and final divorce decree with the facts and findings of law for the marriage in question. Catholics are required to provide the name and town of the parish in which they were baptized. Christians of other

traditions will be asked to provide proof of baptism. This can be a certificate or photocopy of the family Bible, or even an affidavit by themselves or a parent.

**If a required document or essential information is lacking, your petition will not be accepted.** In a limited number of cases, the Tribunal staff may be able to help you obtain them, but this can delay your case for some weeks.

- If possible, provide other supporting documents such as counseling records, email records, text message records, letters, other legal documents such as court orders, etc.
- **If you wish, end with a prayer.** Once you have completed your packet, you may wish to say a short prayer, asking for the gifts of wisdom, prudence, charity, and calm discernment for all involved.
- **Send or drop off your petition to the Tribunal.** We recommend registered mail with proof of receipt to ensure that it has been received.

## II. Possible grounds for nullity.

The reason why you believe your marriage is invalid is often referred to as the “grounds” for the case. It describes the doubt that exists about the validity of the marriage and will be the basis of the investigation. The judge will make his decision based on the grounds presented for the case. A case may be tried on more than one ground.

### **Insufficient use of reason (Canon 1095, 1°)**

You or your former spouse did not know what was happening during the marriage ceremony because of insanity, severe cognitive disability, mental illness, intoxication or a lack of consciousness. In short, you or your former spouse was not coherent when you said your vows.

### **Grave lack of discretionary judgment, concerning essential matrimonial rights and duties (Canon 1095, 2°)**

Your or your former spouse was affected by some serious circumstances or factors that made either of you unable to judge or evaluate either the decision to marry or to discern the ability of either of you to create a true marital relationship. This could include affective immaturity or a confused emotional or mental state that would prevent a prudent judgment of yourself, your intended spouse, or the nature of the married relationship. This could also include circumstances that limited your freedom to make a sound decision to marry.

### **Incapacity to assume marital obligations due to reasons of a psychic nature (Canon 1095, 3°)**

At the time of the vows, you or your former spouse was unable to fulfill the obligations of marriage because of a serious psychological disorder or other condition. If serious enough, bipolar disorder, anorexia, bulimia, PTSD, or any other psychological malady can invalidate consent.

### **Ignorance about the nature of marriage (Canon 1096, §1)**

You or your former spouse seriously did not know that marriage is a permanent relationship between a man and a woman ordered toward the procreation of offspring by means of sexual intercourse.

### **Error of person (Canon 1097, §1)**

You or your former spouse intended to marry a specific individual who was not the individual with whom the marriage was celebrated. For example, say your former spouse had an identical twin and as a practical joke, they switched places during the ceremony.

### **Error of the quality of the person (Canon 1097, §2)**

You or your former spouse intended to marry the other because he or she either possessed or did not possess a certain quality, e.g., their social status, level of education, religious convictions, freedom from disease, virginity, or lack of a criminal record. In order to be invalidating, the quality must have been directly and principally intended. For example, say one of the principal qualities you felt necessary in your fiancé was that he/she was a baptized Catholic. Turns out after the wedding that they were a Buddhist.

### **Fraud (Canon 1098)**

You or your former spouse was intentionally deceived about the presence or absence of a quality in the other. The reason for this deception was to obtain consent to marriage. Note, the burden of proof here is on the one deceived, not the deceiver. For example, you marry someone only to find out after the wedding that they had a criminal history of violent crime. The family of your former spouse went to great pains to hide this from you because they knew that if you found out, you would never marry this person.

### **Error regarding marital unity that determined the will (Canon 1099)**

At the time you gave your vows, you or your former spouse believed that marriage was not necessarily an exclusive relationship with just one other person. Polyamory (multiple parties to a marriage) and open marriages are examples of this.

### **Error regarding marital indissolubility – determined the will (Canon 1099)**

At the time you exchanged vows, you or your former spouse believed that civil law had the power to dissolve marriage and that remarriage was acceptable after civil divorce.

### **Error regarding marital sacramental dignity – determined the will (Canon 1099)**

At the time you and former spouse exchanged vows, one or both of you did not believe that marriage is a religious or sacred relationship but merely a civil contract or arrangement.

### **Willful exclusion of marriage – Total Simulation (Canon 1101, §2)**

You or your former spouse observed the ceremony solely as a means of obtaining something other than what the Catholic Church understands and intends as marriage. For example you or your former spouse got married simply to obtain legal immigration status in the country, or to obtain housing or monetary benefits, or to legitimize a child. To prove this ground, you have to prove that what you intended in your mind did not conform with the words and signs in the wedding ceremony.

### **Willful exclusion of children – Partial Simulation (Canon 1101, §2)**

At the time you exchanged vows, either you or your former spouse or both of you married intending, either explicitly or implicitly, to deny the other's right to sexual acts open to procreation. Use of contraception or sterilization of either party would be indicative of willful exclusion of children.

### **Willful exclusion of marital fidelity – Partial Simulation (Canon 1101, §2)**

You or your former spouse married intending, either explicitly or implicitly, not to be bound to fidelity. Discovery of affairs during the engagement, during or soon after the wedding, or early in the marriage may be indicators of willful exclusion of marital fidelity.

### **Willful exclusion of marital permanence – Partial Simulation (Canon 1101, §2)**

At the time of the wedding, you or your former spouse went through the wedding intending, either explicitly or implicitly, not to create a permanent relationship, retaining an option to divorce. The presence of a prenuptial agreement may be an indication of willful exclusion of marital permanence.

### **Future condition (Canon 1102, §1)**

At the time you exchanged vows, either you or your former spouse attached a future condition to your decision to marry, e.g., “You will complete your education; your income will be at a certain level; you will remain in this area; etc.”

### **Past condition (Canon 1102, §2)**

At the time you exchanged vows you and/or your former spouse attached a past condition to your decision to marry, but it turned out that condition did not exist, e.g., “I will marry you provided that you have never been married before (but in fact they were); I will marry you provided that you have graduated from college (but in fact he/she did not).”

### **Present condition (Canon 1102, 2)**

At the time you or your former spouse exchanged vows, one or both of you attached a present condition to your decision to marry and that condition did not exist, e.g., “I will marry you provided you don't have any debt; I will marry you provided you don't have a criminal record. I will marry you provided you are the same religion as me.”

### **Force (Canon 1103)**

At the time of the wedding ceremony, you or your former spouse married because of an external physical or moral force that he/she could not resist, and marriage was the only solution. “Shotgun weddings” may sometimes be considered marriages where force invalidates. But it may also involve such things as extended family threatening to withhold financial or housing or social benefits and marriage is the only option.

### **Fear (Canon 1103)**

At the time you exchanged vows, you or your former spouse chose to marry because of fear that was grave and inescapable and was caused by an outside force, where marriage was the only solution. (Note: Sometimes this applies to cultures with arranged marriages, but this can also be considered when grave moral pressure is put on by culture or extended family.)



### **III. The petition is accepted and the case begins.**

If your Petition is received with the necessary documents and if there appears to be merit to the case, the Judicial Vicar will determine if the case can be accepted. Once a case is accepted, a protocol number will be assigned and your case is logged in the docket.

Once all the internal processes of the Tribunal have been completed, you and your former spouse will receive a Decree of Acceptance and Citation of Parties. At this point, the case actually begins.

Your former spouse may choose to participate fully or not at all. If we do not hear from them after a designated period of time, or their whereabouts cannot be found, they will be declared absent and the case continues without their input.

Sometimes for good reasons, a petitioner does not wish their former spouse to know his or her location. If this is the case, please let the Tribunal staff know so that we may take appropriate precautions to keep your physical location confidential.

### **III. The evidence is gathered.**

Once the case is accepted, a court official known as the Auditor will begin to arrange for testimony and other evidence relative to your case to be gathered. Often the judge assigned to your case will have specific questions that need to be answered about certain aspects of your case.

Your own testimony and the testimony of your former spouse (if they choose to participate) are best done in a personal interview. If it is not feasible or possible to be personally interviewed, a written questionnaire can be used.

In the meantime, the Auditor will cite your witnesses and solicit their written testimony. Other evidence may also be solicited such as counseling records, or other helpful documents. For certain cases, the Auditor may seek expert testimony

### **IV. The testimony and documents of the case (“the Acts”) are made available to the parties for their review and comment.**

Once the Auditor has determined that all possible evidence has been gathered, the judge will be asked to issue a “Decree of Publication.” This means that you and your former spouse will have the opportunity to review all the evidence collected.

You will receive a letter from the Tribunal asking if you would like to review the evidence. If you choose to review the Acts, the Tribunal staff will arrange a time for you to come into the office and do so.

To ensure the sacred nature of the forum, no document may be removed, copied, or reproduced by any means. While reviewing the Acts, paper and pencil will be provided to allow you to comment on testimony other than your own.

The Tribunal staff then asks the judge to conclude the gathering of evidence by issuing a Decree of Conclusion.

## V. The Defender of the Bond reviews the Acts and submits a brief.

The Tribunal staff then sends the case to the Defender of the Bond. The Defender of the Bond has the responsibility of advocating for the validity of the attempted marriage. It is the job of the Defender to propose and explain everything which reasonably can be brought forth in favor of validity. Once the Defender has reviewed the Acts, a brief is submitted to the Tribunal.

## VI. The Tribunal renders a decision.

The judge then reviews the facts of the case in light of the proposed grounds in the context of the law. If the judge finds *with moral certainty* that the facts of the case support the petition on the proposed grounds, then he will render a decision in the AFFIRMATIVE, that is, it is proven that the marriage is invalid on those grounds. If the judge cannot determine with moral certainty that the facts support the proposed grounds, the judge will render a decision in the NEGATIVE, that is, the case for invalidity has not been proven. If there is more than one proposed ground for a case, it is only necessary for the judge to find in the AFFIRMATIVE on one ground for the marriage to be considered invalid.

## V. The parties are notified of the decision.

Once the judge renders a decision, you and your former spouse (if they have chosen to be notified) will receive notice of the decision. This is called the “Publication of Sentence.”

Once each party has received notification of the decision, they have fifteen working days to appeal the decision. An appeal may be done on procedural or substantive grounds. There are fees associated with an appeal and the party requesting the appeal is responsible for these fees. Once the period for appeal passes the judge will issue a Decree of Execution and the decision immediately has the force of law.

## VI. The case is recorded and notifications sent.

Once a case is executed, the details are recorded and your church of baptism will be notified so that they may make the appropriate notations in your sacramental record.

The case file is then placed in the Archives of the Tribunal.

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## FAQ's

### **What is the status of a divorced person in the Church?**

There is a popular myth out there that divorced Catholics are somehow excommunicated. This is patently untrue. Simply being divorced does not change one's status as a Catholic in good standing. Divorce is an emotional and painful experience. This is when you need your Church community more than ever. The only problem arises if one should attempt marriage again without first having a Declaration of Nullity.

### **Are my children illegitimate?**

No. The annulment process has no civil effects whatsoever in the United States.

### **Is the process confidential?**

Yes. Great discretion is exercised for the good of all involved. No part of the process becomes public, nor can the proceedings of a Church Tribunal be used in any civil court. Only the parties involved have a right to the information gathered and only then under very strict conditions. For example, when reading the Acts, a person may not remove, photograph or copy the information in any way.

### **Is there any impact on my civil divorce?**

No.

### **Is there a fee?**

The Archdiocese of Anchorage-Juneau does not charge, but we will gladly accept contributions to offset the significant cost of processing your case. Your generous contribution in any amount to help defray these costs is greatly appreciated. In this way, we can continue to ensure that justice will not be denied due to the financial circumstances of those who seek it.

## FOR FURTHER INFORMATION:

(907) 297-7724

FAX: (907) 297-7764

E-MAIL: [tribunal@aoaj.org](mailto:tribunal@aoaj.org)

## The Tribunal Prayer

Almighty and ever-living God,  
may your Spirit of wisdom, understanding and counsel  
guide the steps of all involved in this process;  
may your Spirit of fortitude and knowledge  
enable the revealing of difficult, but necessary truths;  
may your Spirit of piety and reverence  
help us to persevere in charity and firm resolve  
for the just and charitable resolution of the matter at  
hand.

Through our Lord Jesus Christ your Son  
who lives and reigns with you  
in the unity of the Holy Spirit,  
God forever and ever. Amen.