



## Metropolitan Tribunal

# FREQUENTLY ASKED QUESTIONS (FAQ) ABOUT DECLARATIONS OF NULLITY

**The following information reflects the revised law of the procedures regarding an Ecclesiastical Declaration of Nullity, which were announced by Pope Francis on September 8, 2015, and which went into effect on December 8, 2015. The following information provides a more extensive explanation of the procedure than the “Basic Information” page included with the Tribunal application.**

Metropolitan Tribunal applications are available at all parishes of the archdiocese and on this website. (To avoid confusion, the Metropolitan Tribunal is sometimes referred to as: The Marriage Tribunal).

For further information or questions, you may phone the Metropolitan Tribunal on weekdays between 9:30 a.m. and 4 p.m. at 312.534.8280 (English, Spanish and Polish). An “on call” person is available to assist you.

Written inquiries should be sent to:

Office of the Metropolitan Tribunal  
Archdiocese of Chicago  
835 N. Rush St.  
Chicago, IL 60611  
Fax: 312.534.8314

### GENERAL OVERVIEW QUESTIONS

#### 1. What does the Catholic Church teach about marriage?

The Catholic Church teaches that marriage is created by God and governed by his laws. Marriage is the union between a man and a woman that is an unbreakable covenant/bond. All people who are capable of giving consent can marry. However, certain requisites are essential for this bond to be truly unbreakable and binding.

- A person must commit to a marriage that is permanent, exclusive and open to children.
- A person must be capable of committing to marriage by making a mature judgment to commit to a life-long union with the physical, psychological and emotional maturity necessary to live out that commitment.

#### 2. What is a formal declaration of nullity and what must be proven?

A formal declaration of nullity is a statement by the Roman Catholic Church that the marriage in question is not a binding (sacramental) union because the relationship fell short of at least one of the elements mentioned above that is essential for a valid marriage according to the teachings of the Catholic Church.

- It must be proven that when the couple exchanged consent one of those essential elements was lacking even though it may not have been evident to the couple or others at that time.
- It does not deny that a relationship existed which was recognized as a marriage by civil law.
- It does not imply that the relationship was entered with ill-will or moral fault.
- It does **not** state that children of such marriages become illegitimate.

### 3. Who needs a declaration of nullity for a previous marriage?

- All Catholics who were previously married in the Catholic Church before a priest or deacon and two witnesses or who received permission from the Catholic Church to marry elsewhere.
- All Orthodox Christians and members of the Polish National Catholic Church who were previously married in their respective church by their priest.
- All others who were previously married civilly or any church and now wish to marry a Catholic in the Catholic Church or wish to have their current civil union to a Catholic “blessed” (convalidated) in the Catholic Church.

### 4. Who may apply for a formal declaration of nullity? Why does the church become involved in the marriages of non-Catholics?

- Either party to a marriage may apply for a declaration of nullity whether he/she is Catholic or not.
- The Catholic Church only has a right to look into a marriage’s validity when one of the parties to that marriage petitions for it to do so.
- The reason that the Catholic Church becomes involved in the marriages of non-Catholics is usually because a previously married non-Catholic person now wishes to marry a Catholic in the Catholic Church, or he/she wishes to have his/her current civil union to a Catholic “blessed” (convalidated) in the Catholic Church.
- Since all consenting adults who are capable of marrying are free to do so, the Catholic Church views the marriages of non-Catholics as binding, unless some defect or impediment is proven to have been present.

### 5. Are there different procedures that the Metropolitan Tribunal uses in deciding marriage cases?

Yes. Depending on the facts and the circumstances of each case there are several procedures that can be followed. Some of these are: the ordinary formal procedure, the documentary procedure, the Favor of the Faith dissolution and non-consummation. The Briefer Process introduced by Pope Francis might possibly be an option only if certain conditions have been met (see next question). Once the application is reviewed at the Tribunal, the applicant (petitioner) will be contacted by the Tribunal to assist in initiating the proper procedure. The procedure that will be described beginning with question 12 is what is called the ordinary formal process and is the most common procedure used.

### 6. What is the briefer process, and what are the conditions for its use?

As of December 8, 2015 Pope Francis decreed the possibility of a briefer formal process that can possibly be used in certain circumstances. **The diocesan bishop, in consultation with the Judicial Vicar, will make the determination as to whether or not the briefer process may be used.**

- **Both parties to a marriage must agree to the use of the briefer process**, and both must sign the petition (*libellus*) and cooperate with the Court.
- Evidence of the possible marital invalidity must be very certain.
- The parties and knowledgeable witnesses must be willing to take part in an interview at the Tribunal.
- **The diocesan bishop makes the final decision in such cases.**
- If the bishop decides that the evidence is insufficient, the case is then transferred to the ordinary formal procedure.

### 7. Why is a civil divorce necessary before one applies for a declaration of nullity?

Since Church and State are separate in our country, a declaration of nullity by the Catholic Church does not have any civil effect. As a result, individuals must first obtain a civil divorce to satisfy legal requirements.

- Pursuing a declaration of nullity prior to a divorce could be considered alienation of affection.

- For marriages not recognized civilly (e.g. common law), one should seek the advice of a civil attorney.
- Please be aware that the State of Illinois does not recognize common law marriages, even though several states in the USA do. Again, seek the advice of a civil attorney as to whether a civil divorce is needed.

## **8. Does a formal declaration of nullity affect the legitimacy of children?**

**Absolutely not.** Church law specifically states that children born of a marriage, which has been declared invalid, are legitimate and remain legitimate (Canon 1137). This is a greatly misunderstood point. The decision of a Church Tribunal has no effect on civil norms that govern legitimacy of children, child support, visitation rights, etc. Just as a civil divorce and a civil annulment do not make children illegitimate, neither does a Catholic Church declaration of nullity.

## **9. Why is the previous spouse contacted? Should the applicant inform him/her that he/she has begun a case?**

- (The applicant is called the *petitioner* and the other party is called the *respondent*.)
- Both persons are parties to the marriage. Just as in civil law, when one is taking an action involving another person, he/she must be informed of it. If the person is not interested in taking part in the Tribunal proceedings, that is his/her choice, but Church law requires that he/she must be notified.
- It would be a courtesy to inform a previous spouse that one has applied for a possible declaration of nullity. Even though the couple is divorced and there may be hard feelings between them; informing the previous spouse about beginning this procedure is an appropriate thing to do. Otherwise, it can be intimidating to the person to receive a letter from the Metropolitan Tribunal about this.
- At the same time that the applicant (petitioner) is notified that the petition has been accepted, the previous spouse (respondent) will be informed and offered the opportunity to participate. The non-participation of a former spouse does not stop the progress of the case. However, his/her cooperation is invariably helpful in the search for truth.

## **10. What if the address/whereabouts of one's previous spouse is unknown?**

If a previous spouse's whereabouts is unknown, it must be established that reasonable efforts have been made to ascertain the former spouse's specific place of residence.

- A reasonable effort includes consulting relatives of one's previous spouse, employers, phone directories, or Internet searches. If it has been verified that these efforts have failed, the case may proceed.

## **11. Will one's whereabouts be divulged to the previous spouse?**

No. Address and contact information regarding the petitioner and the witnesses are never given to the respondent, and vice versa.

## **QUESTIONS CONCERNING APPLICATIONS AND PRELIMINARY STEPS**

### **12. How is a formal declaration of nullity procedure started?**

- The applicant (petitioner) completes an application with the assistance of a priest, deacon or pastoral minister. (Applications are available at all parishes in the archdiocese and on this website.) All questions should be carefully answered with current legal names and contact information. An incomplete application will delay the progress of a case. The completed application is mailed to the Metropolitan Tribunal at the address printed on the application.
- After a completed application has been received and reviewed; a packet containing a questionnaire and various forms is mailed to the applicant. The Metropolitan Tribunal gathers its evidence by sworn written affidavits. The petitioner puts forth his/her contentions in a written case history of the couples' backgrounds, courtship, marriage and divorce. A priest, deacon, pastoral minister or notary public can notarize signatures on the forms.

- After all the questionnaires and forms have been completed, the petitioner mails everything back to the Metropolitan Tribunal. **It is imperative that one makes copies of all relevant documents.**
- The petitioner will be assigned a Field Delegate and will be asked to make an appointment with him/her.

### **13. What is a Field Delegate and what is his/her role?**

- Field Delegates are specially trained laypersons, deacons, religious sisters and brothers, and priests throughout the archdiocese who assist petitioners in presenting a case to the Tribunal. They are members of the Metropolitan Tribunal Staff.
- The Field Delegate conducts a personal interview with the petitioner, secures any additional information, helps in the preparation of a formal petition (*libellus*) and ensures that all forms are complete. He/she will answer any pertinent questions. A copy of one's marriage license/certificate (if not married in a Catholic Church) and divorce decree will be needed.
- Then the Field Delegate returns everything to the Metropolitan Tribunal in preparation for review.
- **All procedures up to this point are the preliminary steps in submitting a case.**

### **14. When is a case accepted formally?**

- After the Field Delegate has returned the completed packet to the Marriage Tribunal Office, the Judicial Vicar reviews the material to determine whether there are plausible grounds on which the petition may be accepted.
- If there are plausible grounds, the case is formally accepted and both parties are notified (cited) and informed of the proposed grounds for the case. The respondent is asked if he/she wishes to participate.

## **QUESTIONS CONCERNING THE ORDINARY FORMAL PROCEDURE**

### **15. What is an overview of the ordinary formal case procedure after the preliminary steps are completed and the petition is accepted?**

- As mentioned in question 14, when both parties are informed (cited) by the Judicial Vicar of the proposed grounds for the case, they are given fifteen days to express their observations concerning those grounds.
- After fifteen days, the parties are informed of the name of the Judge and other Court personnel and that the proposed grounds are established.
- The respondent is given the opportunity to participate in the proceedings by submitting testimony and the names of witnesses. If he/she does not wish to participate, the case still moves forward.
- Then the witnesses who are knowledgeable about the courtship, engagement and marital situation will be asked to submit statements.
- One or both of the parties may be asked to be interviewed by a Court-appointed psychologist depending on the circumstances of the case.
- After sufficient evidence is gathered, the Judge will inform both parties that the proofs may be reviewed by them at the Tribunal office. They have two weeks to submit any additional evidence if they wish. In any review, the person must sign an oath of confidentiality.
- After that two week opportunity is ended for any additional submissions and for any review, the case is closed to further testimony.
- Then the Advocates, if appointed, will submit briefs.
- Finally the Defender of the Bond, who is charged with upholding the bond of marriage, submits a brief presenting any reasonable objections to a possible declaration of nullity.
- The Judge then makes a Decision and both parties are informed of the decision.

- An affirmative Decision means that a declaration of nullity has been granted. If they wish, the parties may review the decision at the Metropolitan Tribunal Office within four weeks of the date of the decision. Also, either party has a right to appeal the Decision within that time period, if he/she is aggrieved.
- When there is an affirmative decision, and neither party makes an appeal of it within four weeks, it becomes effective and the necessary papers and decrees are sent to both parties.
- A negative Decision means that a declaration of nullity has **not** been granted. With a negative Decision the case ends at that point, unless the aggrieved party exercises his/her right to appeal the decision within the four week period.
- **Note:** An explanation of the appeal procedure is contained in question 19.

## **16. Who can be a witness and how many are needed?**

A witness is a person who can provide the Metropolitan Tribunal with information about the parties and their relationship. Ideally, a witness should be able to provide information about the time leading up to the marriage, the marriage itself and the reasons for the break-up of the marriage.

- Most persons, including family members, are eligible to be witnesses. Specifically excluded by Church law are confessors and minors and those with certain diminished mental capacities.
- The Metropolitan Tribunal discourages children of the parties (regardless of age), and the current or prospective civil spouse of either party to offer testimony, unless there is a grave reason.
- Both parties can submit the names of witnesses, and the Judge will contact them approximately four weeks after the parties are notified about the established grounds.
- It is suggested that a minimum of three witnesses should be submitted.
- It is important to make sure that the witnesses have agreed to cooperate prior to submitting their names and addresses. Failure of the witnesses to respond in due time is one of most common reasons for a delay in the processing of a case.
- Remind witnesses to keep copies of their testimony.
- If no witnesses are available, the judge may allow character references in order to attest to the truthfulness of one's statements.

## **17. Who has access to the information in the case?**

All the information gathered in the course of this investigation is considered confidential. This information is not made available to any third party except as may be authorized by Church law or State law regarding mandated reporting.

- Church law states that each party does have access to the information that is unknown to him/her, unless the Judge determines that access to a particular document may cause serious harm or unless the information is protected by civil statute.
- The purpose of a party's access to information is in order to defend one's position for or against a possible ecclesiastical declaration of nullity, and he/she must sign an oath of confidentiality regarding the testimony.

## **QUESTIONS CONCERNING THE DECISION, ITS EFFECTIVE DATE AND POSSIBLE APPEALS**

### **18. Is the decision of the Chicago Tribunal final?**

- As of December 8, 2015, Pope Francis eliminated the requirement that two conforming decisions are needed for a declaration of nullity. Thus, one decision is all that is necessary for the majority of decisions.

- Before it goes into effect, time is provided to lodge an appeal.
- Unless one of the parties (or the Defender of the Bond) lodges an appeal or a plaint of nullity against the decision within four weeks of the date of the decision; it becomes final (effective).
- When the Decision is effective, both parties are free to marry, unless there is a requirement for counseling (see: question 20). The necessary documents and decrees concerning the granting of the declaration of nullity will be sent to both parties.

## 19. How can a party appeal the Metropolitan Tribunal's decision? Can an appeal be denied?

If either party is aggrieved by the decision, he/she has right to make an appeal within a certain timeframe.

- Either an affirmative or negative decision can be appealed.
- The aggrieved party must inform the Judge who issued the decision **in writing** within four weeks of the decision that he/she wishes to appeal the decision to either the Court of Appeals of the Province of Chicago, or directly to the Roman Rota.
- Both the Court of Appeals and the Roman Rota can take one of two actions: 1) review the case and decree that the appeal has no basis, and as a result confirms the Decision; or 2) confirm or overturn the decision after a full investigation of the case.
- The appellant may submit new evidence.
- Unless the appellant indicates that he/she wishes to appeal the case to the Roman Rota, it is presumed that the appellant wishes the case to be heard by the Court of Appeals of the Province of Chicago.
- The one who appeals a case must bear the costs associated with the appeal.

## 20. When an affirmative decision becomes executed (effective), are both parties free to marry in the Catholic Church?

Generally speaking, yes. It means that the previous marriage is no longer an obstacle for either party to enter into a new marriage in the Catholic Church. Since there is only one bond of marriage between the two people, a declaration of nullity releases both of them from that bond.

- However, because of the trauma associated with marital problems and divorce, in some cases the Judge may place a **recommendation** (*monitum*) that one or both of the parties engage in a program of counseling or catechesis before entering a new marriage.
- In other cases, the Judge may issue a **prohibition** (*vetitum*) when there is serious concern whether a person is currently capable of entering a new marriage and has the proper understanding toward accepting the essential obligations of marriage.
- In cases of a prohibition, the one preparing the individual for a new marriage must contact a representative of the Office of Canonical Services to assess what must be done prior to a future marriage taking place.

## OTHER FREQUENTLY ASKED QUESTIONS

### 21. How long does the formal declaration of nullity procedure take?

It is not possible to specify how long the procedure will take. Generally, a decision is reached approximately 12 months from the time the Judicial Vicar accepts the case, **not** from the time the application is originally submitted.

- **In no case can a favorable decision or a proposed date of its issue be guaranteed.**

## **22. Can the Metropolitan Tribunal of the Archdiocese of Chicago accept all cases?**

There are some cases that the Metropolitan Tribunal cannot accept because it does not have jurisdiction. As of December 8, 2015, the Metropolitan Tribunal may accept a case automatically if 1) the marriage took place within the Archdiocese of Chicago; 2) if either of the parties lives in the Archdiocese of Chicago; 3) if the witnesses live in the Archdiocese of Chicago. If the Metropolitan Tribunal does not have the proper jurisdiction, it will assist the petitioner in making an application to the proper Tribunal.

## **23. Do both persons have the same rights?**

Yes. However, along with those rights comes the obligation of cooperating with the Metropolitan Tribunal. Some of the basic rights are:

- To know about the proceedings and proposed grounds.
- To be able to raise reasonable objections to the proposed ground or suggest additional or different grounds. However, the Judge makes the final decision after hearing the petitioner and the respondent.
- To have an advocate.
- To be able to provide testimony and the names of witnesses.
- To have access to the testimony not known to him/her.
- To read the decision and appeal it, if aggrieved.

## **24. What happens if a previous spouse chooses not to participate in these proceedings?**

If the respondent chooses not to participate:

- That is his/her choice.
- The case may still move forward.
- The respondent will be kept informed of the various steps of the proceedings.
- A decision will be made based on the evidence at hand.

## **25. What if a previous spouse does not want a declaration of nullity?**

Either party to a marriage does have a right to petition the Metropolitan Tribunal to investigate his/her marriage, despite the objections of the other party. The party who objects to a possible declaration of nullity has the right to argue for his/her position. However, the proceedings cannot be stopped for the sole reason that a party does not want a case to be heard.

## **26. If a relationship with one's previous spouse is less than cordial because of certain events, can't the Tribunal choose not to inform him/her about this?**

Despite ill-feelings between the parties, one's previous spouse does in fact have a right to know about these proceedings.

- He/she has a choice of participating or not.
- However, one will not have to meet with or have contact with the other person as part of these proceedings.

## **27. Why are canonical grounds for a declaration of nullity different from the civil grounds used in a divorce?**

The law used in Metropolitan Tribunal proceedings is based on Church Law and the Catholic Church's theological understanding of marriage, not English Common Law. The grounds for a Church declaration of nullity are based either on a person's lack of capacity to enter marriage or his/her lack of proper intention at the time of marriage. These grounds do not include common civil grounds, such as irreconcilable differences or "no fault."

**28. If one wants an advocate to assist him/her who chooses the advocate?**

One has a right to have an Advocate appointed from an approved list of Advocates on file with the Metropolitan Tribunal. An Advocate must have a background in canon law in order to safeguard rights and write a brief arguing for his/her client's position.

**29. Why are there time limits set for the various stages of these proceedings?**

Similar to civil law, a person has a right to have a case heard and concluded within a reasonable time. Thus, there are mechanisms built into the law to avoid unfounded or frivolous delays.

**30. What can one do if he/she disagrees with the decision?**

As previously mentioned, either party has a right to appeal the Judge's decision (see: Question 19).

**31. Will a declaration of nullity change any of the provisions in one's divorce decree?**

No. The Metropolitan Tribunal's decision has no civil effects because of the separation of Church and State in the United States.

**32. How can the church try to "annul" a marriage? Can it erase something that actually happened?**

Although the term "annulment" is used commonly, it does not appear in the Code of Canon Law at all. The terms – *null*, *nullity*, *declaration of nullity* – are being used in a technical-legal sense in the law, not according to the common understanding of these words.

- The Catholic Church cannot erase the fact that two people lived together for a certain amount of time or that a marriage produced children.
- A declaration of nullity states that despite the fact that two people went through all the formalities of a marriage, it fell short of one or more of the requisites necessary for a marriage to be considered valid according to Catholic Church Law (see: Question 1).

**33. Why do people have to go through such a lengthy and complicated process? They are a person of good faith. Why can't the Church take the person's word that the marriage was a mistake? After all, many times the problems in a marriage are self-evident.**

Many marriages have problems, but not every problem points to marital invalidity. Couples often learn to work out their problems and move past them. When a marriage ends in divorce, it is important to investigate why that happened. When couples marry, they vow that they are making an informed decision to wed and that they are fully committing themselves to this unbreakable covenant/bond. Now, at least one of the parties is making a claim that this was not so. So, the burden of proof rests on the person who is making that claim.

- Whether the marital covenant/bond is binding or not is not just a matter of opinion, but must be proven by facts. The burden of proof rests on the party who petitions the Metropolitan Tribunal.
- A Church declaration of nullity is declaring far more than the fact that a decision to marry was just a mistake. It is stating that it has been proved that something essential for a covenant/bond was missing from its beginning.
- A petitioner is asking the Church to clarify his/her status in the Church; i.e., is he/she bound to this marriage, or not? A decision cannot be made unless all the facts are presented and evaluated. Again, the validity or invalidity of a marriage does not rest on the opinion of one or the other of the parties, but on the proven facts.



**34. If the party responsible for the breakup of the marriage applies for a declaration of nullity why is the church rewarding him/her with a possible decision in his/her favor?**

A declaration of nullity is not some sort of reward. It is a statement that the couple's marital consent was so badly flawed that it could not be considered valid according to Catholic teaching. If anything, it is a sad statement about marital failure.

**35. Is the Tribunal trying to show/prove that one of the parties is at fault for the marital failure?**

No. Neither party to a marriage is "on trial" in these proceedings. The question before the Court is: Is the bond of marriage really binding or not? Since the Church presumes that a marriage is valid and binding, it is the petitioner who must present sufficient evidence to overturn that presumption.

**36. Isn't marriage a private affair between the spouses? Shouldn't the spouses be the ones to decide if the marriage is valid or not?**

Contrary to this popular opinion, marriage is not a private affair. It has legal and social consequences. It is contracted in a public forum in which two people promise certain things to each other. Certain religious and civil responsibilities and obligations arise from that public commitment.

**37. Can a divorced person receive the Sacraments? Some say that one is excommunicated when he/she divorces.**

There is a great deal of misinformation circulating about this. A divorced person is not excommunicated and a divorced person may receive the sacraments of the Church, including Christian burial. However, there is a problem when a divorced person enters a second union without a declaration of nullity. Essentially, that person is now living in a relationship that is not recognized by the Catholic Church.

**38. I just can't imagine that Jesus demands such an involved process. It is not found in the Bible, so why doesn't the Church just let divorced individuals get on with life?**

Since Jesus's time, believers have tried to put his teaching into practical terms. Jesus, in his teaching, did not always provide a blueprint as to how to do this. Throughout the centuries the Church has sought to implement His teaching. Jesus had a high regard for marriage and taught that divorce was not acceptable (See: question 1). Since marriage is a serious and public matter, a thorough and objective procedure is needed to determine whether a particular marriage is valid or not.

**39. Many people claim that this is just a moneymaking venture of the Church. How much does the Church make on declarations of nullity?**

Such individuals are misinformed. Recent statistics show that Tribunals in the United States overall were "in the red" more than \$3 million per year.

**40. Why is there a fee for the case and what is it?**

A fee is assessed to defray a portion of the Metropolitan Tribunal's administrative expenses. Pope Francis did not want the cost of the process to stop anyone from undertaking it and called on tribunals worldwide to limit fees to administrative costs. Indeed a person does not "pay for an annulment." Rather, fees are requested to pay for the expenses associated with the procedure; i.e., the printing of documents, utility bills, postage and the wages of Tribunal personnel.

- The one who petitions for a declaration of nullity is responsible for the fee.
- However, no one will be denied the service of the Marriage Tribunal because of a genuine inability to pay the fee. Nevertheless, the principles of good stewardship require that the Metropolitan Tribunal evaluate any requests for a fee reduction.
- In reality, the requested fee only partially covers the total cost of a case. The remaining portion of the expenses is paid by the Archdiocese of Chicago. The requested fee is **not** a donation or a fee for a favorable decision.

#### **41. What are the current fees that are requested?**

As of this printing the requested fees are as follows:

- Application fee: \$50.00 which covers the cost of filing.
- Ordinary Formal Case, Briefer Procedure and Favor of the Faith fees: \$900.00 (can be paid in installments)
- Documentary and Pauline Privilege fees: \$500.00 (can be paid in installments)
- Checks are to be made payable to: Catholic Bishop of Chicago
- Direct debit from checking accounts and credit cards can be arranged.

#### **42. Why can't one set a date for a future wedding before a case is completed?**

- First, the Marriage Tribunal cannot guarantee that a case will be completed within a certain timeframe.
- Second, one can never be certain that a favorable decision will be rendered in a case because invalidity may not be proven.
- Third, depending on the circumstances of a particular case, a person may be required to seek counseling or spiritual direction before a future marriage can take place in the Catholic Church.
- Fourth, it can be embarrassing for couples who have set a date for a Church wedding, even though the case is not concluded by the time they had hoped, or if a negative decision is given, or if a counseling requirement must be fulfilled before a wedding. For the pastoral welfare of couples, a future wedding date may not be scheduled until a case is completed – a decision has been rendered and has become effective (i.e., there is no appeal). Parish personnel are aware of this policy of the Archdiocese of Chicago.