Annulment FAQ

DIOCESE OF WHEELING-CHARLESTON
1300 Byron Street
Post Office Box 230
Wheeling, West Virginia 26003

Dear Brothers and Sisters in Christ:

The end of marriage through separation and divorce from a spouse is always a difficult time, characterized by a profound sense of loss and often by deep feelings of regret or guilt. The loss of a spouse through divorce, in many ways more tragic than the loss of a spouse through death, often results in pain about the past and causes anxiety about the future. The Church makes many efforts to offer the separated and divorced support to accept and forgive the past, to cope with the present, and to prepare for the future. Among these ministerial efforts is the process of annulment.

The Tribunal assists a divorced person looking at his or her former union to determine if it was a valid marriage as taught by Christ and His Church. For many, the Tribunal's mission in the Church is confusing and frequently misunderstood. The annulment process can seem foreign and vague, sometimes causing fear, anxiety, and apprehension. Many people have serious misperceptions regarding annulments, making the confusion worse. Those who approach the Tribunal do so out of a desire to clarify their status in the Church in the hopes of having some closure on the past, of being declared free to marry, or of having their current civil marriage validated within the Church.

To promote a greater understanding of the work of the Tribunal and the marriage nullity process, this brief booklet was composed to address some of the most frequently asked questions with clear and concise replies. I hope this booklet will help you better understand our work and assist you in the preparation of your case for the Tribunal.

For further information, please contact your parish priest, deacon, or pastoral minister. These individuals will be able to answer your questions and assist you in preparing a petition for the Tribunal.

With every prayer and best wish for you and your family, I am,

Sincerely yours in Christ,

Rev. Justin Golna

Very Rev. Justin M. Golna, J.C.L.
Judicial Vicar

What are the Church's teachings about marriage and annulment?

The Catholic Church's teaching on marriage, based on the teachings of Jesus Christ Himself, is best expressed by canon 1055 of *The Code of Canon Law:*

> "The matrimonial covenant, by which a man and a woman establish between themselves a partnership for the whole of life, is by its nature ordered toward the good of the spouses and the procreation and education of children; this covenant between baptized persons has been raised by Christ the Lord to the dignity of a sacrament."

The covenant of marriage "is brought about through the consent of the parties, legitimately manifested between persons who are capable according to law of giving consent; no human power can replace this consent" (can. 1057 §1). In other words, it is consent that makes marriage; not the presence of a priest or deacon (though for Catholics this is necessary), not the civil license, not the permission of parents, etc.

Consent to marry, once validly given, cannot be retracted or taken back, no matter how personal feelings for one another may change over time. The act of saying "I do"—what is called "the exchange of consent"—creates a permanent bond of marriage between a man and a woman. Both the Old and New Testament teach that this bond of marriage is, by its very God-given nature, unable to be broken or set aside by any earthly power (Gen 2:24; Mt 19:1-9). Thus, a marriage, validly entered through the consent of a man and woman free from any obstacle and capable to marry, lasts until the death of one of the partners.

Jesus Christ Himself explained that divorce and remarriage, which was not part of God's original plan for marriage, was allowed by Moses in the Old Testament because of "the hardness of your hearts" but "from the beginning it was not so" (Mt 19:8). In fidelity to God's plan and Jesus Christ's teaching, the Catholic Church does not recognize the effect of civil divorce over the indissoluble bond of marriage and does not permit divorce and remarriage.

The Church also recognizes the reality that marriages sometimes breakdown for any number of reasons. In such a circumstance, one or both of the parties may become convinced that the marriage was not valid, either because of some obstacle to marriage or because of a difficulty with the consent of one or both former spouses. Indeed, not every expression of consent uniting two partners gives rise to the sacred bond of marriage because not every expression of consent is freely given, fully

considered, properly expressed, or valid. Sometimes one or both of the parties do not understand what they are doing, are not truly prepared for marriage, or do not really mean what they say. In these and similar conditions, one can request ("petition for") a decree of matrimonial nullity from a Tribunal of the Church.

A decree of matrimonial nullity, commonly called an annulment, is a decision concerning a specific relationship, stating that this union was not a marriage according to the teachings of the Catholic Church. It does not deny that an emotional and deeply personal relationship existed, nor does it imply ill will on the part of either person, or place blame for the failure of the relationship. Unlike a civil divorce, which is concerned only with the end of marriage, the annulment process considers exclusively the couple's consent to marriage and what they brought to the marriage. The annulment process does not ask who did what to whom; rather, it asks if the consent of the parties was valid or not. If it was valid, a permanent and indissoluble marriage exists. If it was not valid, the marriage was not valid and the parties are not bound to it.

(For further reading on the Sacrament of Marriage, please see *The Catechism of the Catholic Church,* 1601-1690.)

Do the previous marriages of non-Catholics and non-baptized persons need to be annulled before these persons can be married in the Catholic Church?

The Church teaches that the covenant of marriage "between baptized persons has been raised by Christ the Lord to the dignity of a sacrament" (can. 1055, §1). In other words, all marriages between two baptized persons, whether those being married are Catholic or Protestant, are presumed to be valid and sacramental marriages. And all sacramental marriages are endowed with the grace of indissolubility, whether the parties themselves understand this or not.

A simple rule of thumb is this: Whenever a person wishes to marry in the Catholic Church and there has been a previous marriage, that bond of marriage must be examined to clarify the status of persons and their freedom to marry. This applies equally to all persons, Catholic, non-Catholic, or non-baptized. Such an examination is also necessary in cases where one or both marriage partners were never baptized. Marriages where one or both parties were not baptized may be resolved under special norms.

Do I have a right to an annulment?

While everyone has the right to petition the Church to consider whether or not his or her marriage is valid, no one has a right to an annulment. The decision of the Tribunal is based on the evidence which is submitted by one or both parties and their witnesses in relation to recognized reasons of nullity, that is, canonical grounds of nullity. The final decision of the Tribunal is based on three criteria:

1. the ground of nullity agreed upon during the process;
2. the legal tradition and understanding of the Church on this ground;
3. the proofs in the form of statements, declarations, depositions, documents, and reports submitted by the parties, the witnesses, and professional counselors (if the latter are needed).

In January, 1996, Pope John Paul II addressed the issue of the right to an annulment. He explained:

> "It must be remembered that the spouses, who in any case have the right to allege the nullity of their marriage, do not however have either the right to its nullity or the right to its validity. In fact, it is not a question of conducting a process to be definitively resolved in a constitutive sentence, but rather of the juridical ability to submit the question of the nullity of one's marriage to the competent Church authority and to request a decision in the matter. This does not prevent the spouses themselves, since it is a question regarding the determination of their personal status, from having their essential procedural rights recognized and granted: to be heard in court, to submit proofs in the form of documentation, expert opinion and witnesses, to know all the instructional acts and to present their respective defenses" (Address to the Roman Rota, January 22, 1996, paragraph 3).

At the same time, the Church also recognizes the rights of the marriage bond itself. Since marriage is the basic building block of society, a public good, and a contract made by the publicly witnessed consent of the parties, the covenant of marriage itself does have rights. Chief among these is the right to exist. And so the Church teaches that "marriage enjoys the favor of the law; consequently, when a doubt exists the validity of a marriage is to be upheld until the contrary is proven" (can. 1060). The object of the annulment process is to demonstrate whether there is sufficient proof to overturn the Church's presumption in favor of the validity of marriage.

Who can ask for an annulment?

Either party in a marriage that has ended in divorce has the right to ask the Church to consider the validity of a former marriage. However, if one of the former spouses is now deceased, there is no need to request an annulment.

Although one party makes the request, the other party has the right to participate in the process. The party who makes the request is called "the petitioner"; the other party is called "the respondent." The rights of both parties, especially the right to a good reputation, are respected and protected by the Tribunal. The former spouse must be contacted and informed of his or her rights in the process.

If I seek an annulment, does my previous spouse have to be contacted?

Since the relationship took place between both persons, both persons have to be offered the ability to participate in the annulment process. Church law requires that the previous spouse—"the respondent"—be contacted and informed of the grounds, given the opportunity to give testimony, and asked to name witnesses. While the respondent does not always exercise this right, the law requires that this person be informed. The refusal of the respondent to participate does not hinder the process, though his or her cooperation can greatly help. For this reason, the petitioner is required to submit the name and current mailing address of the respondent or that of a relative or friend, who can ensure the respondent will receive the Tribunal's mailings. If the address of the respondent is not known, the Tribunal can suggest some means of obtaining it; however, the Tribunal does not have the resources to search for this information. Since the relationship existed between the petitioner and the respondent, it is the petitioner's responsibility to supply the address of the respondent.

What is the Diocesan Tribunal, and what is its role in the annulment process?

The Diocesan Tribunal is part of the pastoral ministry of the Church which considers matters that pertain to Church legislation or Canon Law. Among its other duties, the Tribunal considers petitions for the declaration of matrimonial nullity by guiding the annulment process from the receipt of the petition to the final judgment.

For a marriage to be annulled, it must be proven that an essential quality or element of the marriage was lacking. The Tribunal is the place within the Church where evidence is brought by the parties to ensure there is a just and expeditious consideration given to the petition.

Can I go to any Tribunal?

Just like civil courts, there are some objective criteria for determining which Tribunal is able to accept your petition (called "competency"). The following Tribunals are able to process a petition:

1. the Tribunal of the Diocese where the wedding took place;
2. the Tribunal of the Diocese where the respondent currently lives;
3. the Tribunal of the Diocese where the petitioner lives, provided that the petitioner and the respondent live in the territory of the same Episcopal Conference (ordinarily, the same country), and the respondent's Tribunal agrees, after hearing from him or her; and
4. the Tribunal of the Diocese in which the majority of proofs (evidence) are located, if the respondent's Tribunal gives consent after hearing from him or her.

For instance, The Tribunal of the Diocese of Wheeling-Charleston could accept any of the following cases:

— a petition from a person whose the marriage took place in this state;
— a petition regarding a marriage in which both former spouses now live in West Virginia;
— a petition from a person who does not live in West Virginia but whose former spouse now does;
— a petition from a person who now lives in West Virginia and whose former spouse lives outside West Virginia but in the United States, provided that the Judicial Vicar (head of the Tribunal) where the former spouse now lives agrees, after hearing from the other party.

How is the annulment process begun?

The person who wishes to have a marriage annulled seeks the assistance of a parish priest, deacon, or pastoral minister. This person can be appointed by the petitioner as his or her "advocate," that is, a pastoral minister who assists the petitioner in presenting the case to the Tribunal. The person should not contact the Tribunal directly. The required application and petition forms are completed with the help of the priest, deacon, or pastoral minister who will then forward them to the Tribunal. The Tribunal, after ensuring that it is competent to hear the petition, carefully studies all the materials and issues a decree initiating the process.

The Tribunal may decide that a formal interview or an interview with one of the Tribunal's professional counselors is required. The interview with this counselor takes place at the Tribunal office, and the appointment is scheduled by the Judge assigned to the case in consultation with the person involved.

What preliminary application and documents do I need?

After meeting with the person, a parish priest, deacon, or pastoral minister will assist in the completion of the preliminary questionnaire and the formulation of a *petition*. It is essential to the process that the preliminary questions be answered as thoroughly and carefully as possible.

In addition, the petitioner must submit the names of no less than four witnesses (excluding parents; no less than six if the parents are deceased). The witnesses should be people that knew the parties during the courtship, engagement and early marriage. They should be knowledgeable and cooperative family, friends, or co-workers, who are able to provide their independent view of the couple and the couple's decision to marry. Children borne of the marriage are not accepted as witnesses and individuals who only knew the couple during the marriage or toward its end should not be named as witnesses.

The above items and all *pertinent documents* (baptismal certificates for Catholic parties, marriage certificate, and the *final* divorce decree) are sent to the Tribunal. The formal petition includes a check-list to help the petitioner and advocate in collecting the necessary items.

When the petition is received by the Tribunal, the respondent will be apprised of his or her right to give testimony, name witnesses, and also have an Advocate. The same rights that are afforded to the petitioner will be offered to the respondent.

What are some possible grounds for annulment?

Among the signs that might indicate possible grounds for an annulment are: marriage that excluded at the time of the wedding the right to children, or to a permanent marriage, or to an exclusive commitment. In addition, there are youthful marriages; marriages of very short duration; marriages marked by serious emotional, physical, or substance abuse; deviant sexual practices; profound and consistent irresponsibility and lack of commitment; conditional consent to a marriage; fraud or deceit to elicit spousal consent; serious mental illness; or a previous bond of marriage. The Tribunal has a separate list of the 21 distinct grounds upon which a petition can be based and will assist the petitioner and the advocate in deciding the ground best suited to the circumstances. Petitioners should remember that adultery and other faults in marriage, while extremely sad and hurtful, are not in and of themselves grounds for an annulment.

How long does the annulment process take?

On average, the annulment process takes approximately eight months to one year. Delays in the process often occur when the petitioner or their witnesses do not respond promptly to requests from the Tribunal. In order to ensure that the process moves without interruption, the petitioner should submit all the necessary documents and information together at the very beginning. The petitioner should also contact potential witnesses before giving their names and addresses to the Tribunal and make certain that they are willing to participate in the process.

Why does the annulment process take so long?

The Church has a duty to protect, defend, and teach the sacred dignity of marriage. When the bond of marriage is challenged through a petition for an annulment, the Tribunal has the duty to uphold the validity of marriage until it has been proven otherwise. To do otherwise would be to merely grant a divorce by a different name. Therefore, the Tribunal must examine the petition and the evidence conscientiously to make certain that the decision is a just one based on the law and the facts. The annulment process is designed to get to the truth of the matter as quickly and justly as possible while protecting the rights of the parties involved.

What is the divorced person's status with the Church while seeking an annulment?

Divorced Catholics who have not entered into another marriage outside the Church are free to—and are encouraged to—fully participate in the life of the Church by receiving the sacraments. Being divorced does not alter one's status in the Church.

Catholics who are divorced and have attempted to remarry without having received an annulment are **NOT** excommunicated. But, they are not free to receive the sacraments until this objective contradiction is resolved . Such persons are expected and encouraged to fulfill their other duties in practicing their faith by attending the Mass, but not receiving Holy Communion, pending a finding of their freedom to remarry.

After I submit a case to the Tribunal, can I set a date for a future wedding?

A future date for a Catholic wedding cannot be set, or the validation by the Church of a current union cannot take place, until there is a final and definitive resolution by the Court of Second Instance. There are three reasons for this. First, neither the Tribunal nor any pastoral person can guarantee that the marriage will be found invalid. The Tribunal is bound to make a decision in conformity with evidence that has been submitted by the parties and the witnesses and in accordance with the laws of the Church. There are instances when one or both parties believes the marriage to be invalid, but there is inadequate evidence to support the conviction. Second, the Tribunal cannot state with certainty how long the process will take, since much depends on the petitioner and his or her witnesses. Third, it does happen that, when declaring the parties to be free to marry, the Tribunal attaches some pastoral counseling, catechesis, or work that must be done before the one or the other party may enter a new marriage.

Do the parties have the right to inspect the evidence which has been submitted to the Tribunal for a decision?

The Code of Canon Law gives both the petitioner and the respondent the right to review the case file in the Tribunal office during regular business hours. After all of the evidence has been gathered, the parties will be notified by mail of their right to review individually the case file. Each party has the right to review the evidence gathered to date and respond to it. Like civil law, the Church's law recognizes that parties cannot defend themselves if there is no opportunity to review the material gathered in support of the ground of nullity.

How does the Tribunal reach a decision to grant an annulment or support the presumption of validity?

After receiving the petition and contacting the former spouse, the Tribunal waits for the witnesses' forms to be returned. After all the evidence is submitted, the Tribunal determines if a further personal interview at the Tribunal with one of the Tribunal's professional consultants is required.

Next, the parties and the advocates are given the opportunity to review the evidence. The case is then submitted to the Defender of the Bond. The Defender's role is to present to the Tribunal all the evidence that supports the validity of the sacred bond of marriage. After the Defender's observations are submitted, the Judge studies the case and renders a written decision based on the facts of the case and the law.

Can the Church's decision to grant or not grant an annulment be appealed?

If the annulment is granted, the parties are given the right to appeal. If the decision is appealed, the entire case is reviewed again and a second decision given. Both parties always have the right to appeal the decision and always have the right to appeal to the Holy Father.

If the Tribunal does not grant an annulment, an appeal can be made, either by the petitioner or the respondent. In such a case, it is important that new and substantial evidence be given. There are two ordinary courts of appeal. For the Diocese of Wheeling-Charleston, the domestic appeal court is the Interdiocesan Tribunal of the Province of Baltimore, and the international ordinary court of appeal is the Roman Rota of the Holy See. If the appeals Court overturns the first Tribunal's decision, the matter is sent to the Roman Rota for a second decision.

Once an annulment is granted am I free to marry?

The annulment is granted only after two courts have given a positive response to the petition. If the Tribunal of the Diocese of Wheeling-Charleston grants the decree of nullity and the decision is not appealed, Church law requires nevertheless that a second court review the first decision to ensure the decision conforms to the proofs and that the canonical process has been followed. In the case of an appeal of the first decision, one of the ordinary courts of appeal must hear and resolve the matter. In other words, it takes two "affirmatives" to make an annulment.

When the annulment has been granted, both former spouses are free to marry. In some cases, the Church might caution against or even prohibit an individual from entering a marriage if there is a serious reason to believe a future marriage will not be a happy and lasting one. To foster a future happy and successful marriage, the Tribunal may require some marriage counseling and preparation before a second marriage can take place.

No date can be set for a future wedding until there is a definitive, affirmative decision to grant an annulment. There is, however, no prohibition against the couple's participation in the formal marriage preparation program, or the rite of Christian Initiation of Adults with the understanding that participation in such a program does not guarantee an affirmative decision by the Tribunal.

If a marriage is annulled, what is the status of the children?

An annulment, which declared individuals free to marry, has no civil effects; therefore, children born in lawful wedlock remain legitimate. More importantly, the annulment process regards only the consent of the parties to marriage and looks at what the couple brought to their marriage; it does not touch upon or deny that a deep, interpersonal relationship existed between the two people. Nor does it in any way deny or cancel out the love between parent and child. The biological and emotional relationship of mother and father to son and daughter is not destroyed by the process of annulment. The children borne to the couple who believed themselves to be married are, and will forever be, their children, regardless of divorce or annulment.

How much does an annulment cost?

The processing of a formal case generally generates costs of approximately $1,000.00, though this can vary depending on the Tribunal. Most Tribunals in the United States ask that the person seeking annulment to assist the Tribunal in meeting partially its administrative costs by paying a set fee. This legitimate request has led to some serious misunderstandings and the common impression that all one has to do to receive an annulment is to pay the set fee.

For this reason, and because of the economic difficulty in which many divorced persons find themselves, the Tribunal of the Diocese of Wheeling-Charleston does not ask petitioners to pay any fee. Instead, each parish in the Diocese has contributed to an endowment fund which offsets the administrative costs of the Tribunal.

At the same time, petitioners who do not live in the Diocese of Wheeling-Charleston, since they do not support the parishes of the Diocese which have contributed to the Tribunal endowment, are asked to assist the Tribunal through a fee of $250.00.

More Questions?

If you have additional questions, please contact your parish priest, deacon, or pastoral minister. The Diocese of Wheeling-Charleston also has a "Question and Answer" portion of its Web-site—www.dwc.org—where some helpful information can be found.

Diocese of Wheeling-Charleston
Tribunal Office
P.O. Box 230
Wheeling, WV 26003