

Decree of Nullity

Marriage Is Indissoluble The Church, teaches, as does Jesus in Mt 19:9, that every Christian marriage is indissoluble except by the death of one of the spouses. No power on earth can dissolve a ratified and consummated union of two baptized Christians (one in which vows have been validly exchanged and which has been later consummated by intercourse).

A valid marriage requires the proper intention at the time that the vows are exchanged. The parties must intend to make a marriage, which by definition is a life-long communion open to new human life. These are called the unitive and procreative meanings of marriage. If either of the two meanings of marriage (an indissoluble union and procreation) is excluded by the will of *either* the man or the woman no marriage is made on the wedding day (canon 1096).

For example, someone who has no intention of being faithful cannot make a marriage since at the very time of exchanging vows he or she precludes the life-long fidelity that is intrinsic to marriage. This is often demonstrated right at the beginning, or shortly thereafter, by infidelity. Or, someone who intends to exclude the possibility of children does not validly marry. (Those who cannot have children due to age or infertility are NOT meant here, but only those who could bear children but intend to avoid this marital responsibility completely.)

It should be noted that if a valid marriage is made on the wedding day later infidelity or a contraceptive will would not invalidate it. It is only, when the will of either party in making the marriage contradicts the Plan of God from the beginning of marriage that it is invalid. The Church accepts every marriage as valid until proven otherwise.

A *decree of nullity* does NOT concern whether the marriage was a happy one, whether one of the spouses LATER became unfaithful, or LATER decided not to have children, but only their INTENTION on the wedding day. If a marriage was made THAT day, it is a life-long bond, irrespective of what happened later in the marriage. To "annul" a marriage based on "failure to achieve communion" or some other factor not recognized by the Holy See (as has been done) is not a decree of nullity at all but a divorce. Such decisions are a source of grave scandal in the Church and are both canonically and morally invalid.

The Tribunal Process The process of obtaining a *decree of nullity* entails submitting the facts of the marriage to the Diocesan Tribunal. Either party can do this. Then after an evaluation of these facts, along with supporting witness testimony, a judgment on the validity of the marriage is made. That decision can be appealed by either party, their advocates or the Defender of the Bond. The appeal can be made to either to the Archdiocese of Dubuque or to the Roman Rota. If no appeal is lodged by the deadline date provided on the First Instance correspondence, the decision stands. If an appeal is lodged, the case is forwarded to the court of that parties' choice.

Marriages After a Decree of Nullity If a decree of nullity is given, and there is no stipulation attached, then the parties are free to marry again. However, when the condition that led to the invalidity (e.g. lack of intention, mental illness, incapacitating immaturity) still exists, then a stipulation is placed upon the person who has that condition and that person may not marry again until the terms of the stipulation have been met.

The Formal Process

The focus of a formal investigation is centered on the period of time leading up to the wedding and seeks to discern the truth concerning the state of mind, intentions, and capacity for consent which each party possessed at the time of the wedding. Later developments in the couple's relationship *may or may not* shed light on these

issues. The mere fact that a couple's marital relationship broke down is not proof that incapacitating or invalidating factors existed at the time of the wedding. In other words, *there is no guarantee that nullity will be proven* simply because a relationship broke down. The formal process has four basic stages:

- A. application stage - The person who makes the application is called the Petitioner. He or she speaks with the Parish Priest or Pastoral Minister and completes an initial application form. This form is sent by the Priest or Pastoral Minister to the Tribunal on behalf of the Petitioner. The staff of the Tribunal assesses the application to determine which type of process is required and forwards an appropriate questionnaire to the Petitioner. Special instructions accompany the questionnaire and explain how it is to be completed. At this time, the Petitioner is assigned an Advocate to assist in formulating responses to the questionnaire. A request is also made at this time for the names and addresses of knowledgeable and credible Witnesses. The best Witnesses are persons who knew the parties well prior to the wedding and during the early years of the couple's marital life.
- B. investigative stage - When the Petitioner returns the questionnaire and his or her responses, the investigation begins. The investigation is assigned to a Judge. After an initial assessment of the Petitioner's testimony, the Judge may either ask for additional information or may move directly to the point of inviting the former spouse (the Respondent) to present proofs. Witnesses are contacted next. There is no need for any of the parties to have direct contact with each other during the investigation.
- C. publication stage - The parties are informed by the Judge that the taking of all available testimony has been completed. This testimony (the acts of the case) is made available for the parties to review and make comment upon. Afterward, another staff member of the Tribunal (the Defender of the Bond) examines the testimony. The Defender of the Bond has the responsibility to defend the particular marital bond in question and to defend the dignity of the institution of marriage in general. Hence, the Defender presents an argument from the evidence which gives reasons why the marital bond should continue to be considered valid and binding. This stage of the process is governed, as is the entire process, by the policy of confidentiality articulated below.
- D. decision-making stage - The Judge and any associate Judges assigned to the case consider the pertinent law regarding the case as well as the facts which have been submitted in evidence and a judgment is rendered. As stated earlier, that decision can be appealed, either to the Archdiocese of Dubuque or to the Roman Rota, by either party, their advocates or the Defender of the Bond. If no appeal is lodged by the deadline date provided on the First Instance correspondence, the decision stands. If an appeal is lodged, the case is forwarded to the court of that parties' choice. Just as every marital relationship is unique, so also is every formal case. Therefore, it is not possible to give any estimate regarding how long a formal investigation will take to complete. There are too many variables from one case to another. Moreover, *there is never a guarantee of an affirmative decision*. Please be advised that **NO NEW MARRIAGE DATE MAY BE SCHEDULED IN ANY CATHOLIC PARISH UNTIL THE ENTIRE PROCESS IS COMPLETE AND A DECLARATION OF NULLITY HAS BEEN GIVEN.**

Confidentiality

The Tribunal is the judicial branch of government in the Diocese of Sioux City. Tribunal processes are governed by Canon Law. The Tribunal is obliged to uphold that law in protecting and promoting justice and the pastoral welfare of the Christian Faithful. In the United States, Tribunal processes are purely an ecclesiastical or church matter and are conducted in accordance with the procedural norms of Canon Law of the Catholic Church. Hence, the Petitioner and Respondent are afforded access to the acts of the case with certain restrictions which may not be germane to the processes for civil divorce. It is the policy of the Tribunal to disclose the acts of a marriage case to duly authorized persons *OR* to other ecclesiastical tribunals only to the degree necessary for the just and expedient resolution of the case. Confidentiality regarding the acts of a case is essential in order for the Tribunal to fulfill its obligation to the parties involved. Any materials received by the Tribunal become the property of the Tribunal.