

Chapter 4: The Tribunal

This chapter describes the norms and procedures for the Tribunal of the Archdiocese of Omaha. Part 1 offers a general introduction and addresses some pastoral considerations regarding marriage cases. Part 2 covers formal annulment cases. Part 3 covers other types of marriage cases addressed by the Tribunal.

Part 1: Introduction and Pastoral Considerations

The Tribunal of the Archdiocese of Omaha adjudicates all petitions for marriage cases according to the norms established by the *The Code of Canon Law* and the Vatican Instruction *Dignitas Connubii*. This Tribunal is the First Instance Court of the archdiocese and it is the Second Instance Court for the Dioceses of Lincoln and Grand Island, Nebraska. The Tribunal of the Archdiocese of St. Louis, Missouri is the Second Instance Court for the Tribunal of the Archdiocese of Omaha.

The presumption of the Church is that all marriages, both Catholic and non-Catholic, are valid unless canonically proven invalid. Furthermore, the Church teaches that every valid marriage between baptized persons is a sacrament (canon 1055 §2) and thus it is considered a permanently binding union until the death of one of the spouses. Although not every marriage is a sacrament, *e.g.*, when at least one party is not baptized, the very fabric of society demands that every marriage be presumed valid unless proven otherwise.

4.1.1. Determining Marital Status

4.1.1.1. Any judgment made by the Tribunal regarding a marriage in question is not a moral judgment about the current or past moral behavior of a petitioner or a respondent; rather it is a canonical judgment based on the facts and circumstances surrounding the validity of marital consent. The Tribunal considers the following: whether there is an existence of an impediment at the time of the ceremony (canons 1083-1094); whether or not the proper canonical form was followed when at least one of the parties is a Catholic (canon 1108); whether or not one of the parties had a defective intention at the time of the marriage ceremony related to permanency, fidelity and openness to children (canon 1101); whether there was a psychological defect on the part of one of the parties at the time of the ceremony (canon 1095); and various other factors and circumstances are considered when trying to determine the validity of a previous marriage.

4.1.1.2. Priests, deacons and any lay ministers involved in pastoral ministry related to annulments should avoid giving petitioners the impression that a decree of nullity is a certainty and that all they need do is wait until the process has been completed. Absolutely no pre-marriage preparations of any sort, *e.g.*, the use of the FOCCUS instrument or giving a wedding date on a parish calendar to a couple, may be done until a declaration of nullity has been granted and the parties have been formally notified of that decision. The same principle applies for those who are seeking

dissolution of a previous marriage in *favorem fidei* and for nullity cases involving a lack of form and *ligamen* (prior bond).

- 4.1.1.3. Whenever providing advice or direction to someone who is thinking about making a petition for a declaration of nullity, the petitioner in a formal case should be made aware that the judgment of the Tribunal about the validity of a marriage is made regarding the time frame of the marriage ceremony itself and not simply what led to the breakdown of the marriage. The petitioner in a formal case should be cautioned that, generally speaking, the longer a marriage lasts, the more difficult it is to prove its invalidity. Nevertheless, if someone wishes to clarify their marital status, the Tribunal encourages the person to present a petition.
- 4.1.1.4. Once a petition has been presented to the Tribunal, then it will decide whether or not the formal process for a declaration of nullity may begin. Petitions for a formal case may be accepted at any time after the couple has been civilly divorced. The petitioner should be made aware that it takes about one year to process both formal cases and “favor of the faith” cases. Lack of form cases generally take two or three months to process, while *ligamen* cases usually take between six months to a year. The Tribunal processes each case and adjudicates them in the order in which they have been formally accepted by the Tribunal. The Tribunal discourages priests, deacons or lay ministers from providing a petitioner with any type of preliminary judgment regarding the outcome of the case.

Part 2: Formal Annulment Cases

A formal annulment case involves marriages which are recognized by the Catholic Church, namely, a marriage ceremony that was conducted by a bishop, priest or deacon and witnessed by at least two others within the Catholic Church; a marriage ceremony involving a Catholic and a baptized non-Catholic conducted by a non-Catholic minister with a proper dispensation from canonical form; a marriage conducted by a non-Catholic minister between two baptized non-Catholics; a marriage conducted by a civil official in a marriage between two baptized non-Catholic parties. The above-mentioned non-Catholic marriage ceremonies between baptized non-Catholics must involve marriages between parties who were considered free to marry by the Catholic Church at the time of the ceremony. If one of the parties to a non-Catholic ceremony was not considered free to marry at the time of the ceremony, then a petition for a *ligamen* (prior bond) may be considered (see section 4.3.2). Marriages, both Catholic and non-Catholic, involving at least one non-baptized person at the time of the marriage ceremony and throughout the entire period of marital cohabitation may allow for a favor of the faith petition if all of the required conditions are met (see sections 4.3.3. and 4.3.4). Otherwise, a formal annulment process is required.

4.2.1. Procedural Steps for a Formal Case

- 4.2.1.1. Anyone may obtain a formal annulment petition outline from the Tribunal or his/her parish. The petitioner should carefully follow the instructions from the outline

when writing their narrative and presenting the necessary documents for a formal petition.

- 4.2.1.2. A petitioner must not be given a date by their parish priest, deacon, lay minister or secretarial staff member for a Catholic marriage ceremony until a decree of nullity has been granted and any prohibitions have been lifted (see section 4.2.2). A decree of nullity requires receiving an affirmative decision from both the First Instance Court of the Tribunal of the Archdiocese of Omaha and an affirmative decision from the Tribunal of the Archdiocese of St. Louis, which serves as the Second Instance Court. A Catholic should never be given the instruction or even suggestion by a priest, deacon or lay minister to “get married civilly first then we can do the marriage in the Church later.” Marriages are presumed to be valid unless proven otherwise. It is a serious violation of basic moral norms to instruct, suggest or encourage someone to violate canon law and Catholic moral teaching by attempting marriage outside of the Church.
- 4.2.1.3. When a divorced person who is in another romantic relationship or civil marriage desires to be baptized and/or received into full communion of the Catholic Church (normally through an RCIA program), the person may not be a formal member of the RCIA process nor participate in the Rite of Election and subsequent formalities related to the RCIA process until he/she has received a decree of nullity. (See section 3.2.1.13.k).
- 4.2.1.4. Boyfriends/girlfriends, fiancé/fiancées, and spouses (from civil law marriages) of those who wish to enter the Catholic Church must also be considered free to marry before a catechumen or candidate may become Catholic. Although the Tribunal can estimate the length of the various Tribunal processes (see 4.1.1.4.), the Tribunal cannot guarantee the length of these processes or the outcome of the cases.
- 4.2.1.5. It is not required for the parish priest, deacon or lay minister to submit a petition for a declaration of nullity on behalf of the petitioner; however, the Tribunal appreciates any support given to the petitioner by parish ministers. Once the case has been accepted, then the petitioner will receive direct contact from the judge of the case.
- 4.2.1.6. The petitioner should be made aware of the fact that several knowledgeable witnesses will be required by the Tribunal in formal marriage cases. The witnesses will be contacted by the Tribunal and asked to fill out a questionnaire. The best witnesses are generally those who have had personal contact with either the petitioner or the respondent and have known at least one of them prior to, at the time of and in the early years following the marriage ceremony. Consequently, the best witnesses are usually family members and close friends. Nevertheless, other witnesses who are not quite as knowledgeable may be presented for the Tribunal’s consideration.

- 4.2.1.7. A petitioner may also present other evidence in the form of letters, counseling records, psychological reports or other documents that can help provide the facts and circumstances of a particular case. Once the requisite evidence has been obtained, then a judgment will be rendered by the First Instance Court. The Appeal Court for the Tribunal of the Archdiocese of Omaha is the Second Instance Court of the Archdiocese of St. Louis. If there is a split decision between the two Tribunals, then the case may be sent to the Roman Rota, which serves as the Third Instance Court.
- 4.2.1.8. The fee for a completed formal case is \$350. The Tribunal estimates that this fee covers only about one-third of the actual cost of the formal annulment process. This fee is normally paid by the petitioner and may be reduced or waived on a case by case basis when there is a genuine case of poverty. Whenever a psychological expert is used during the annulment process, an additional fee of \$200 will be assessed to the petitioner.

4.2.2. *Vetitum* (Prohibition) and *Monitum* (Warning)

In certain cases a judge may attach a *vetitum* (prohibition) or a *monitum* (warning) to a decree of nullity, indicating that he has a pastoral concern about one or both parties in an annulment case attempting marriage again.

- 4.2.2.1. Whenever a couple presents themselves for marriage preparation to a priest, deacon or lay minister, inquiry should first be made about any previously attempted marriages by either party. Both parties must be considered free to marry according to the laws of the Church before any pre-marriage preparation may begin.
- 4.2.2.2. If an annulment was granted for a prospective bride or groom through the Tribunal of Omaha or any other Tribunal, then an official notification of the decree of nullity must be produced. The Tribunal of Omaha will not issue a decree of nullity in cases that have been judged by this Tribunal until the *vetitum/monitum* requirements have been satisfied. Other Tribunals may simply put the notification of a *vetitum/monitum* directly on the decree of nullity. If a *vetitum/monitum* is noted on a decree of nullity from another Tribunal, please contact the Judicial Vicar for further instructions.
- 4.2.2.3. A *vetitum* (prohibition) is an attachment to a decree of nullity that prohibits another marriage until certain conditions are fulfilled (see section 4.2.2.4.). Every *vetitum* is specifically related to the petitioner and/or respondent. The placement of a *vetitum* upon a petitioner/respondent by a judge indicates that the judge has serious concerns about the person attempting another marriage. Evidence presented to the Tribunal from an annulment case usually involves some, but not all of the following invalidating factors: defective intentions regarding fidelity, permanence, openness to children; psychological problems, alcohol abuse, drug abuse, gambling, domestic violence and other serious problems.

- 4.2.2.4. If a *vetitum* has been placed upon a petitioner or respondent, then the person will have to receive an assessment from a certified counselor or psychologist recommended by the Tribunal. Generally speaking, this involves the counselor or psychologist reviewing the entire annulment file and using that information as a background to an individual meeting with the person. A subsequent meeting is then arranged so that the counselor or psychologist can interview the intended spouse regarding his/her relationship with the party and then the counselor or psychologist will interview both parties together. A report will then be submitted by the counselor or psychologist to the Tribunal with a recommendation of whether or not to lift the *vetitum*. If the report is negative, then further counseling may be needed prior to any premarital preparation done at the parish level, *i.e.*, FOCCUS, and other pre-marriage programs. If there is a positive report, then the prohibition will be lifted, and a copy of the decree of nullity will be issued to the party and pre-marriage preparation may begin.
- 4.2.2.5. A *monitum* (warning) is not considered as serious as a *vetitum*. Nevertheless, the issues raised by a *monitum* must be addressed by the priest or deacon during the premarital preparation process. It is imposed by a judge due to the problematic circumstances and events of a previously attempted marriage. If a couple approaches the parish priest or deacon for marriage preparation and there is a *monitum* placed on one of the parties, then the priest or deacon should contact the judge in the case for instructions. The judge will then make the priest or deacon in charge of marriage preparation aware of the basic facts and circumstances which led to the declaration of nullity. This information should then be used by the priest or deacon as background information in order to better prepare the couple. Once the marriage preparation has been completed, the priest or deacon contacts the judge and provides an evaluation of the couple and recommends whether or not the *monitum* should be lifted.

Part 3: Other Marriage Cases

The Tribunal also adjudicates the following marriage cases.

4.3.1. Lack of Form

The canonical form of marriage given in canon 1108 requires that marriage ceremonies involving at least one Catholic must be done in the presence of a local ordinary, pastor, or a priest or deacon properly delegated, and in the presence of two witnesses, in order for the marriage to be considered canonically valid.

- 4.3.1.1. If a marriage involving at least one Catholic is conducted in the presence of a Justice of a Peace, a Protestant minister or any other minister, the marriage is invalid, unless a dispensation from canonical form was granted by a local ordinary or one of his delegates prior to the ceremony. If a dispensation was not granted, then a declaration of nullity may be pursued based on a canonical lack of form.

- 4.3.1.2. The following are required for a lack of form petition:
- a. A completed lack of form petition with proper signatures of the petitioner and priest or deacon;
 - b. A recent baptismal record (not older than six months);
 - c. The marriage license and divorce decree;
 - d. Fee: \$50.

4.3.2. *Ligamen*

Ligamen (prior bond) cases involve a non-Catholic petitioner who attempted marriage with someone who was previously in a valid and binding marriage at the time of his/her exchange of marital consent (canon 1085 §1).

- 4.3.2.1. The following are required for a *ligamen* case:
- a. A completed petition form for a *ligamen* signed by the petitioner and the priest or deacon;
 - b. The marriage licenses and divorce decrees of all previous bonds of marriage;
 - c. The testimony of the petitioner, respondent and supporting witnesses;
 - d. Fee: \$100.

4.3.3. Petrine Privilege

The Holy Father may dissolve a natural marriage in which at least one party to the marriage was an unbaptized person prior to, at the time of, and throughout the marital cohabitation. This marriage involving a non-baptized person is presumed valid, though it is not considered a sacrament, since both parties were not baptized (canon 1055 §2).

- 4.3.3.1. A petition may be made to the Holy Father for dissolution of a marriage “in favor of the faith” in order for the petitioner to celebrate a valid marriage within the Catholic Church. The following items must be present before a Petrine privilege case can be sent to the Congregation for the Doctrine of the Faith.
- a. The non-baptism of at least one of the parties must be clearly demonstrated by the testimony of the petitioner and knowledgeable witnesses. Testimony must also clearly demonstrate that the petitioner was not the primary cause for the breakup of the previous marriage and that the intended spouse of the petitioner did not influence the breakup of the petitioner’s previous marriage.
 - b. It is not necessary for a non-Catholic party to become a member of the Catholic faith in order for the petition to be granted by the Holy Father; however, the non-Catholic party must be willing to take the necessary pre-marriage instructions and be willing to sign the *cautiones*, *i.e.*, the promises not to interfere with the Catholic party’s practice of the faith and promise to allow the Catholic party to baptize and raise the children in the Catholic faith.
 - c. The Tribunal must obtain a letter from the pastor of the Catholic party testifying that the Catholic party is a sincere and practicing Catholic.

- d. Previous marriages of a Catholic to a non-baptized party performed with a dispensation from the impediment of disparity of cult may be dissolved, provided that the above requirements are met and the petitioner is not attempting to enter a second marriage involving another non-baptized person (there are no exceptions to this requirement).

4.3.3.2. The following documents are required for Petrine privilege cases:

- a. A completed petition form for a Petrine privilege;
- b. The marriage license and divorce decree;
- c. Fee: \$500 (\$440 to the Congregation for the Doctrine of the Faith and \$60 Tribunal expense).

4.3.4. Pauline Privilege

A Pauline privilege case is similar to a Petrine privilege case, except here both parties must have been unbaptized prior to, at the time of, and throughout the marital cohabitation. This type of case can be granted by the Archbishop, and need not be presented to the Holy Father in Rome.

4.3.4.1. A non-baptized person may petition the Tribunal for dissolution of his/her previous marriage to a non-baptized person so that he/she may enter marriage with a Catholic party. In order to consider this petition, the following items must be present:

- a. The non-baptism of both parties must be clearly demonstrated by the testimony of the petitioner and knowledgeable witnesses. Testimony must also clearly demonstrate that the petitioner was not the primary cause of the breakup of the previous marriage and that the intended Catholic spouse did not influence the breakup of the previous marriage.
- b. The petitioner must be baptized and received into the Catholic Church or at least be baptized in a non-Catholic church before a marriage can take place in the Catholic Church.

4.3.4.2. The following documents are required for Pauline privilege cases:

- a. A completed petition form and questionnaire for the petitioner;
- b. The marriage license and divorce decree;
- c. Depositions of knowledgeable witnesses who are able to testify about the matters stated in section 4.3.4.1;
- d. Fee: \$200.

4.3.5. *Ratum et non consummatum*

The Holy Father may dissolve a marriage between two baptized persons that has never been consummated (canon 1142).

4.3.5.1. The following documents are required for *ratum et non consummatum* cases:

- a. Testimony from both the petitioner and the respondent along with any medical and/or counseling records supporting the non-consummation of the marriage;
- b. Testimony from witnesses who are aware of the non-consummated marriage;

- c. The Marriage license and divorce decree;
- d. Fee: \$1000 (This amount is set by the Congregation for Divine Worship and the Discipline of the Sacraments. Please note that if the case can be proven and sent to Rome that the Tribunal is willing to work out a payment schedule and possibly reduce the fee in cases of genuine need).

4.3.6. The Internal Forum Solution (Brother-Sister Relationship)

Catholics who are divorced and remarried outside of the Catholic Church are not free to receive Holy Communion outside of the danger of death. The “Brother-Sister” relationship allows a Catholic to receive Holy Communion while in an invalid marriage under strict conditions (*Familiaris Consortio* 84).

- 4.3.6.1. The Brother-Sister solution involves the couple living as if “brother and sister,” that is, they must abstain from sexual relations. There also must be a serious reason why an annulment cannot be pursued. Furthermore, there must be a serious reason why the parties cannot live apart, such as old age, illness, financial security, etc.
- 4.3.6.2. The Brother-Sister relationship is the only legitimate internal forum situation in cases where there is no reasonable hope of clarifying a person’s marital status through the annulment process. Many times an annulment cannot be pursued because a great deal of time has passed since the marriage in question took place and potential witnesses are either deceased or memories have faded. Also, there may be cases where a petition was made to a Tribunal and a negative decision was rendered with no real hope of reversing the decision. In these and other difficult cases where an annulment is not possible, a Brother-Sister relationship request can be made through the Tribunal.
- 4.3.6.3. The parish priest or deacon should contact the Tribunal in the above cases. Questionnaires will be sent to the priest or deacon so that he may interview each of the parties to determine if the parties can live together without engaging in sexual relations and meet the other requirements listed above.
- 4.3.6.4. A petition for a Brother-Sister relationship is to be sent to the Tribunal. The petition will be studied by the Tribunal and if it appears that the couple fulfills all of the requirements, then it will be presented to the Archbishop who grants or denies the permission. If granted, it may be necessary to demand that the parties receive Holy Communion only where their invalid marital status is not known in order to avoid scandal.
- 4.3.6.5. When permission is granted, the marriage is still considered invalid and therefore no type of liturgical celebration or church blessing may take place in recognition of the permission granted by the Archbishop. The clear and constant teaching of the Magisterium of the Church does not permit any other so-called internal forum solutions for relationships that involve divorced parties who are engaging in sexual relations within the context of an invalid marriage.