



The Annulment Process
Pastoral Care to the Divorced



Office of Canonical Services and Tribunal
P.O. Box 310
Manchester, NH 03105-0310
Tel: 603-669-3101; Fax: 603-669-3102

Diocese of Manchester



Office of Canonical Services
and Tribunal

*For many persons who bring
marriage cases to the Tribunal,
the experience is one of
growth and healing.*


*In all that the Catholic Church does,
we are centered on the death and
resurrection of Jesus,
our Divine Lord and Savior.
May his grace and divine mercy
touch you through this process*



How Many Cases Receive a Negative Decision?

This question can't be answered simply. Cases are carefully screened at the beginning of the process to see if there are possible grounds and sufficient proof. Some cases are rejected at the beginning because there are no grounds. Other cases are abated by the Petitioner or the Tribunal during the process, usually because of the lack of witness testimony. Some (less than 10% of the cases that are decided by the Judges) receive an unfavorable or negative decision.

The Annulment Process *Pastoral Care to the Divorced*



Contents:

Introduction	Pg. 1
The Process	Pg. 3
The Grounds	Pg. 13
Questions	Pg. 36

What About the Children?

It is a common myth that an “annulment” of the parents’ marriage makes children illegitimate. This is not true. A Declaration of Invalidity deals only with the religious elements of the marriage, and does not affect civil or natural elements such as the legitimacy of children, child support, visitation rights, or alimony. An annulment does not imply any ill-will or moral fault on the part of those involved. The process is about the validity or non-validity of the marriage and not about one spouse or the other, nor is it a question of a person’s spiritual relationship with God. In fact, it is because the marriage was entered into in good faith and thought to be a valid marriage that the children of an annulled marriage are considered by the Church to be legitimate.

Is a Divorced Catholic Excommunicated from the Church?

No. This too is a common myth. Divorce does not change one’s status in the Church. However, if someone remarries without first having received a Declaration of Invalidity of the previous marriage, the remarriage prevents a Catholic from receiving the sacraments of the Church. This is because of the teaching of Jesus in the Gospel forbidding divorce and remarriage.

Why Does a Catholic Tribunal Have to Examine the Previous Marriage of Someone Who was Never a Catholic?

The Catholic Church respects the baptism of other Christians, and believes that Jesus’ teaching on marriage applies to all Christians, and not just Catholics. We also believe that marriage by its very nature, is a lifelong commitment, even for persons who were never baptized. Until a Tribunal issues a Declaration of Invalidity for all prior marriages, no person is considered free to enter another marriage within the Catholic Church.

Some Commonly-Asked Questions

How Long Does the Process Take?

There are several types of marriage cases that a Tribunal can hear. This booklet deals with one type of case, the “Formal Case.” A Formal Case trial usually takes from twelve to eighteen months, but if the decision is formally appealed, it can take longer.

Can I Set a Tentative Wedding Date During the Wait?

No. The Church presumes your first marriage to be valid and binding for life—according to the teaching of Jesus—until a Tribunal judges otherwise. Because the Tribunal cannot guarantee either a Declaration of Invalidity or a definite date for judging any case, parties to a case may not set even a tentative date for a new marriage within the Catholic Church until a favorable decision by the Tribunal is reached and ratified, and that decision is communicated in writing.

Is There a Fee?

Yes. The Petitioner is asked to pay a fee equal to about one-half of the Tribunal’s actual court costs for the trial. The other half is subsidized by the Roman Catholic Bishop of Manchester, that is, by the offerings of Catholic people throughout the Diocese of Manchester. We believe it is equitable that those who avail themselves of the services of the Tribunal assist in bearing a portion of the financial burden. As has always been the policy of the Tribunal, if for any reason one is not able to pay all, or part, of the fee, a simple explanation will ensure that special arrangements are made. At no time should financial considerations discourage any person from exercising the right to receive a just hearing from the Church; one’s ability or inability to meet the fee in no way affects the process or its outcome.

Introduction

Few things cause more misunderstandings, generate more confusion, or give rise to more questions, than the work of Catholic Tribunals in marriage invalidity cases, or “*marriage annulments*.” This booklet gives answers to the most commonly-asked questions.

What is a Tribunal?

Church law calls for the existence of a Tribunal in every diocese of the world. The Tribunal of the Diocese of Manchester is under the direction of the Bishop of Manchester and is supervised by his delegate, the Judicial Vicar. He, together with his Judges and a staff of specially trained and experienced priests, religious and lay persons, offers assistance to those who request that the Church study a marriage in order to determine whether or not there is any possibility of a declaration of invalidity. The Tribunal then investigates the marriage, and on completion of their investigation, declares whether or not invalidity has been proved.

The Tribunal is, first and foremost, a Court of Law. The law we adjudicate is the canon law of the Catholic Church, which has as its foundation and its heart the teachings of Jesus Christ in the Gospel. The fundamental law of the Church is the commandment of Jesus to love God above all else and to love one another as ourselves. The procedural laws which govern Tribunals exist primarily to protect the rights of all persons connected with a Tribunal case by providing a structured process of examining the issues and questions surrounding marriage and divorce.

What is Marriage?

The Catholic Church understands marriage to be a covenant by which a man and a woman establish between themselves a partnership of the whole of life which, by its nature, is ordered to-

ward the good of the spouses and the procreation and education of children; the essential obligations of this covenant are unity and indissolubility. Marriage is brought about through the mutual consent of the parties, legitimately manifested between persons who are capable, according to Church law, of giving consent.

For those who have been baptized, a valid marriage is also a sacrament. The Catholic Church believes every valid, sacramental marriage which has been consummated is indissoluble. This is the law of God according to the evidence found in the Gospel, the writings of St. Paul, and centuries of Christian tradition. Although not every marriage is a sacrament, all marriages (Catholic, Protestant, Jewish, non-believer, etc.) between those who are free to marry are presumed to be valid. The good of all concerned (spouses, children, in-laws, society, the Church, etc.) demands this presumption.

How is a Declaration of Invalidity Possible?

In every presumption, the opposite may be true. If sufficient evidence can be shown that an essential element was lacking, the validity of the marriage is questionable.

What is Defective Consent?

Defective consent is the impaired understanding or exclusion of an essential element of marriage that impedes the existence of a full marital covenant as the Church understands it. Such a defect of consent must exist at the very beginning or root of the marriage. If, after investigation, it can be proved that such was the case in a particular marriage, then the Church can declare it invalid. It is important to know that an annulment does not deny the fact that a real relationship existed.

Invalid Convalidation

When a Catholic person or couple seeks to have an invalid marriage recognized by the Church, it is accomplished only through a new marriage within the Church. Each party must make a totally new decision and a new act of consent. They must understand that they are beginning their sacramental marriage, not “blessing” the existing invalid marriage. This ground applies if one or both spouses were Catholic, first entered an invalid marriage not recognized by the Church, and later had that marriage convalidated in the Catholic Church. This ground can be considered if the convalidation was not done freely and knowingly, or if the spouses did not intend to enter a new sacramental marriage at that time, but saw the convalidation merely as a continuation of the existing invalid marriage.

- At the time you married your former spouse, were either of you Catholic?*
- Did the marriage first occur “outside the Catholic Church,” that is, not according to the laws of the Church? If so, was it later convalidated or “blessed” in the Catholic Church?*
- Was there a specific reason for the marriage to be validated (for example, the baptism of a child, illness of a family member, etc.)?*
- Were there serious marital problems before the convalidation occurred, and if so, did either you or your former spouse believe that the validation or “blessing” would help solve those problems?*
- When the marriage was validated or “blessed,” did you or your former spouse believe that it was simply a type of “renewal” of your earlier marriage vows?*
- Did either of you think that the validation was simply a ceremony to go through, and not a new commitment to marriage?*
- Did either of you think that the civil marriage was your “real” marriage, and the validation was just a formality?*
- Did you continue to celebrate your anniversary on the date of your original marriage outside of the Church?*

Reverential Fear (*canon 1103*)

The choice to enter marriage must be made knowingly and freely, or the marriage is invalid. If one or both of the spouses chose to enter marriage principally because of a grave fear of displeasing a person who was an important authority figure, this ground could be used. As in the ground above, reverential fear is an internal emotion which arises from some external force. The external force may have been a strong suggestion (or a command) to enter marriage, or an expression of disapproval over an alternative to marriage. Acting under reverential fear, then, one chooses to marry because failure to do so would greatly displease a person or ideology which is subjectively important.

- Were either you or your former spouse forced or pressured to enter this marriage by someone important in your life (for example, parents, clergy, relatives, a teacher)? If yes, was the marriage this person's idea and not yours or your former spouse's ?*
- Was someone making marriage a condition for something else (for instance, an inheritance, a job, or baptism of your child)?*
- At the time of the marriage, were either of you dependent on parents or others to make major decisions, and if so, was the marriage really decided by parents or another significant person?*
- Was this marriage arranged by your parents or relatives, and not your choice?*
- Do you think the marriage would not have occurred if someone important to either of you had not insisted on marriage?*
- Did either of you actually want to call off the marriage, but felt pressured to go through with it anyway (for example, by a parent saying, "All arrangements are made and I insist that you go through with your plans.")?*

The Process

The following pages outline the various steps in a marriage trial within a Catholic Tribunal. If you are just starting a marriage case, or are considering this step, you may have many questions. The Tribunal staff can help you to understand the process better, as can your parish priest, deacon, pastoral associate, or Field Advocate who will assist you in preparing your initial paperwork.

This process may open your heart and mind to memories that are both joy-filled and sad. At each step of this journey, open your heart to God as well through prayer. May you discover God's deep love for you and the Lord's healing touch.

A Note about Marriage Cases and Testimony

It is important to note at the outset that a Tribunal is not concerned with moral judgments of the parties or the marriage. What is important is that the Tribunal Judges know the truth and all the facts and events which relate to the grounds in a case. Some of these facts may seem embarrassing. At times it may be necessary to tell of events that are painful to recall or that seem to indicate blame or fault. The Tribunal does not seek to determine if one or the other spouse was at fault for the breakup of the marriage, and makes no moral judgments of right or wrong.

The work of a Tribunal is the search for truth, a search for an accurate portrait of the family background of the parties, the courtship, and the marriage. Blame does not enter into the decision-making. In giving testimony, we ask that parties and witnesses be completely honest and open, allowing the Judges to search for the truth of the matter, and not to be concerned about moral or ethical judgments.

*A marriage case before a tribunal
deals exclusively with
religious and spiritual values,
and has a purely religious purpose.*

Preparing the Petition

In the Manchester Diocese, the process is begun by contacting a priest, deacon, or pastoral associate, preferably one in your own parish, who will make an appointment to meet with you to complete a Petition for the Declaration of an Invalid Marriage. This is done only following the completion of one's civil divorce. All parishes in the Diocese are supplied with petitions.

It is important for the Petitioner to provide complete documentation and accurate information on the Petition since a process to accept a case is based on a review of the Petitioner's statements given on the Petition for the Declaration of an Invalid Marriage.

Not only is the Petition evaluated for acceptance by the Tribunal, the Petition is evaluated to discern whether the Petition meets the firm criteria for the Briefer Process described in *Mitis Iudex Dominus Iesus*, Pope Francis' 2015 Moto Proprio. A Petitioner will be notified if the Petition meets the briefer process criteria.

Tribunal Jurisdiction

A Tribunal must have canonical competence (jurisdiction) to hear a case before it can accept it. This is to guarantee that both spouses as well as their witnesses have the opportunity to participate in the case if they wish. For a marriage case, a Tribunal has jurisdiction if any of the following apply:

Force or Fear (canon 1103)

A person must freely choose to enter marriage or the marriage is invalid. Force is a grave threat from outside the person, and may be inflicted intentionally or unintentionally, even by a well-meaning person. Fear is the internal result of the external force. It must be both grave and compelling, so that the person chooses to marry to escape from the force and fear. This ground may be considered if one or both spouses entered marriage in order to be free of some external force or some internal fear which was related to the marriage decision. The choice, then, was not so much to enter marriage, but to be free of the external force or the internal fear of the moment.

- Were either you or your former spouse forced or pressured in any way to enter marriage?*
- Was the marriage someone else's idea, and not yours or your former spouse's?*
- Did either of you feel that you had no real choice whether to marry the other?*
- Were either you or your former spouse deeply afraid that NOT marrying would bring about a serious harm or threat?*
- Was there, in fact, a threat in not marrying?*
- Was there someone or something threatening harm or punishment if you did not marry one another? (Force or threats could come from parents, family, employer, church, cultural expectations, etc.)*

Present Condition (*canon 1102, §2*)

To enter a valid marriage, a person must give free and unconditional consent. A present condition concerns the existence or non-existence of a fact or circumstance in the present time (*e.g.*, pregnancy, a medical condition, career, a character or trait). Placing such a condition on marriage raises serious questions, and it invalidates marriage when it is proven that the condition, upon which the marriage decision depended, was not fulfilled at the time the marriage was entered. This ground may be considered when one or both spouses entered the marriage with an expressed condition based on something present or absent at the time of the wedding.

- Did either you or your former spouse attach any condition concerning the present to your marriage (for instance, “I will marry you on the condition that: ...you were never married before, ...you have finished college, ...you were never in jail, ...you never abused drugs before”)?*
- Did you sign a pre-nuptial agreement or any other document regarding a past condition?*
- Would the marriage have been called off if the condition weren’t fulfilled?*
- Did the condition remain unfulfilled, and if so, was this a reason for the separation or divorce?*

1. The marriage took place within the Diocese of Manchester.
2. The Petitioner or the Respondent resides within the Diocese of Manchester.
3. Most of the proofs (witnesses and other testimony) are within the Tribunal’s territory.

If the Respondent lives outside of the territory of the Diocese of Manchester, this does not mean the Tribunal will be insensitive to the needs and rights of the Respondent. If a personal interview in New Hampshire is inconvenient, a personal interview can be arranged with the Respondent’s local Tribunal or one may choose to participate by mail with a questionnaire or a recorded telephone interview. It is important to the Tribunal and to the case for the Respondent to give testimony in a way that is most convenient that also falls within the directives of Canon Law. This is to guarantee the Respondent’s right to participate if he or she chooses, and does not affect the Petitioner’s right to be heard.

Accepting the Case

Once the competence of the Tribunal is established, the Tribunal will review the statements of the Petitioner to see if the case can be accepted. Both the Petitioner and the Respondent will be informed who the Judges are, as well as the Defender of the Bond, the Ecclesiastical Notary, Auditor, and Assessor assigned to the case. The Defender of the Bond has the role of pointing out for the Judges the elements in the case which seem to support the validity of the marriage bond. The Defender of the Bond has an important role in evaluating the testimony and grounds in a case, and ensuring that the teaching of Jesus and the Church on the permanence of marriage is respected.

Either of the parties may lodge an exception or objection to a person serving as a Judge or Defender if there is reason to think that the person would not be fair or impartial in that role.

Contacting the Petitioner

After the completed petition with all of the requested information and documents has been forwarded to the Tribunal, you will receive a letter from the Tribunal asking you to contact a Field Advocate from among those approved by the Diocesan Bishop, and to meet with your Field Advocate to review your materials and provide further information to introduce your case in a preliminary interview.

At this time, you will be questioned regarding the pertinent facts of the marriage under study, and asked about the family background of each of the parties, the specific dynamics of the courtship, and the circumstances of the marriage. You will be asked to appoint your Field Advocate, an expert in marriage cases. This formal hearing constitutes the “opening” of your case.

Contacting the Respondent

After the Tribunal has accepted the Petition, the Respondent will be contacted. This step is known as “Citation of the Respondent” and is a crucial part of every trial in the Tribunal. The Respondent is notified that the Petitioner has submitted a Petition for the Declaration of an Invalid Marriage and is asked to consider how actively he or she wishes to participate in the case. The Respondent cannot simply “stop” the case, but has several options regarding participation in the trial:

- The Respondent can choose to participate actively by offering testimony, naming witnesses, and personally reviewing the testimony submitted in the case. This participation helps the Judges to come to a fair and fully informed decision.
- The Respondent can choose not to take an active part, but simply trust the Tribunal to come to a fair decision. This can hurt the case, since the Tribunal Judges hear only the Petitioner’s side of the story or events of the marriage.

Past Condition (*canon 1102, §2*)

To enter a valid marriage, a person must give free and unconditional consent. A past condition concerns the existence or non-existence of a fact, typically concerning the spouse’s past. Placing such a past condition on the marriage raises serious questions, and invalidates marriage when it is proven that the condition upon which the marriage decision depended was not fulfilled at the time of marriage. This ground may be considered when one or both spouses entered the marriage with an expressed condition based on something from the past.

- Did either you or your former spouse attach any condition concerning the past to your marriage (for instance, “I will marry you on the condition that: ...you were never married before, ...you have finished college, ...you were never in jail, ...you never abused drugs before”)?*
- Did you sign a prenuptial agreement or any other document regarding a past condition?*
- Would the marriage have been called off if the condition weren’t fulfilled?*
- Did the condition remain unfulfilled, and if so, was this a reason for the separation?*

Future Condition (canon 1102, §1)

To enter a valid marriage, a person must have no reservation or future condition. The spouses are required to give total and free consent to marry one another. If a person enters marriage while waiting to see if in the future a certain condition will be fulfilled or not (e.g., that one's spouse will change religions in the future, or enter a certain profession, or will bear a child) the marriage was invalid. This ground can be considered if one or both of the spouses entered marriage with an expressed condition based on some event in the future.

- *Did either you or your former spouse attach any condition concerning the future to your marriage (for instance, "I will marry you on the condition that: ...we will always live in this area, ...you will complete your medical degree, ...you will become a Catholic, ...we will have a child together")?*
- *Did you sign a pre-nuptial agreement, thinking that divorce was an option if a future condition were not met? If yes to either question, would the marriage have been called off if the other spouse did not agree to the condition?*
- *Did the condition remain unfulfilled, and if so, did this lead to the final separation or divorce?*

- The Respondent can ignore the Tribunal's letter. If this happens, the case will continue and the Respondent will be declared "absent" from the case.

It is essential that the Tribunal contact the Respondent. The law of the Catholic Church requires this. It is not necessary for the Petitioner to contact the former spouse personally as the Tribunal will assume this obligation and conduct all correspondence and interviews with the Petitioner and the Respondent separately. The Petitioner must supply a current and correct mailing address for the former spouse. If the address is not readily available, the Petitioner should seek it through contacts with family members, former friends or other possible sources. In the event it is totally impossible to find the former spouse, the Petitioner must complete a "Search for Address of Former Spouse" affidavit detailing his or her efforts to locate the Respondent's whereabouts so that this information may be on file to account for the legal omission.

Finally, a former spouse who does cooperate in the proceedings will be given the opportunity to appoint an Advocate. An Advocate will be assigned to protect the rights of those who do not participate.

Contacting the Witnesses

Marriage is a public union that has profound effects on the family, society, and the Church. Witnesses, then, are required by Church law to assist the Tribunal to a deeper understanding of you, your former spouse, the courtship, and the marital history.

The Tribunal will require the names and addresses of at least three knowledgeable and willing witnesses who knew both parties and who are aware, directly or indirectly, of the problems of the courtship and the marriage. These witnesses will be contacted by mail and sent a questionnaire to be completed and returned directly to the Tribunal or, if they prefer, they may make an appointment to appear in person or speak with a Court Auditor by telephone. Children of the marriage in question, since they can-

not speak to the courtship or early years of marriage – areas which are critical to the Tribunal study of the marriage – are not usually acceptable, even if they are now adults.

Oftentimes, doctors, psychiatrists, psychologists, professional counselors, priests, ministers, rabbis, etc. have been consulted by the parties before or during marriage. When this is true, the Tribunal will ask you to provide the names(s) and address(es) of the professional(s), and to sign a release of information so that the professional(s) may provide us, confidentially, with information which may be of great value in our study.

It is important to note that the longest delays in cases often arise because witnesses do not respond to the questionnaires. It is the responsibility of the parties to ensure that their witnesses reply. If witnesses fail to respond, it usually means that grounds for invalidity cannot be proven because the statements of the Petitioner are not supported by any other testimony. In this situation, the case is abated by the Petitioner or the Judges.

Reviewing Testimony

Once the witnesses have been given time to respond, the testimony in the case is reviewed. First, one of the Judges determines if there is enough testimony to bring the case to a conclusion. If not, the parties normally will be asked to supply additional testimony and witnesses. If there is sufficient testimony, both parties are given the opportunity to review all of the testimony that will contribute to the final decision, with the exception of any evidence that could be the cause of very serious danger.

This important review is known as the “Publication of the Acts.” It is a publication in the sense that, although the testimony is kept strictly confidential to those outside the case, the Petitioner and the Respondent may review the testimony during business hours at the Tribunal. If either party lives outside the Diocese of Manchester, this may be done at the Tribunal nearest them.

Intention against “The Good of Fidelity” (*canon 1101*)

A valid marriage includes three essential “goods” – children, fidelity, and permanence. If one or both spouses entered marriage with the intention to exclude absolute fidelity, this ground can be considered. Fidelity or exclusivity in marriage means to have only one’s intended spouse as a sexual partner for life. Absolute fidelity prohibits openness to any other sexual relationships. When one enters marriage with the intention of excluding such absolute fidelity, remaining open to the possibility or thinking that they may choose whether to have other sexual partners, the marriage is invalid. It is important to note that what invalidates the marriage is the intention, present from the beginning, to permit infidelity – not actual infidelity. Adultery itself is not a ground of nullity.

- Did either you or your former spouse believe you had the right to determine if you would have other sexual partners during this marriage?*
- Did either or both of you intend to have an “open” marriage which would permit other sexual partners?*
- Did either of you come from a family background where there were many sexual partners, or live-in companions, or were your parents sexually unfaithful during their marriage?*
- Was sexual infidelity acceptable to either you or your former spouse?*
- Did either of you view marriage in such a way that it would permit sexual infidelity or multiple sexual partners?*
- Were either of you unfaithful to the other during your engagement?*
- Were you sexually active before marriage?*
- Did you cohabit with your former spouse before marrying?*
- Did either of you cohabit or live with another person before this marriage?*
- Was there actual infidelity or adultery during your marriage?*

Condition against “The Good of Children” (*canon 1101*)

To enter a valid marriage, a person must place no conditions or limits on the essential elements of marriage, which includes a radical openness to children. This ground can be considered if one or both of the spouses placed a condition on childbearing, such as a limit on the number of children to be born in the marriage. The condition must be present from the beginning of the marriage, and measures must have been taken to ensure that the condition was, in fact, met.

- Did either you or your former spouse express any condition or intention to limit the number of children in the marriage (for instance, “I will marry you on the condition that we have only one child”)?*
- Was this an absolute intention or condition, and not just a vague thought about the future?*
- Was this a firm intention or condition, and not negotiable or changeable?*
- Were there means taken during the marriage to guarantee the fulfillment of this condition or limit (such as contraceptives, sterilization, or abortion)?*
- Was the condition actually fulfilled?*

No copies of the testimony may be made, and no notes taken. The purpose of this review is to correct false statements by submitting additional testimony and, if necessary, additional witnesses. In addition to providing both parties the opportunity to review the testimony, the Tribunal also allows the parties to submit a written statement if they wish to disagree with or disprove anything that was said in the testimony.

After the parties have been given the opportunity to review the testimony and to offer a statement, if they so choose, the evidence gathering stage of the trial is concluded and the case is ready for the Judges to make a decision.

The Use of Expert Witnesses

In some cases, the Tribunal Judges will consult an expert witness before reaching a decision in the case. This is typically done in cases for which the grounds require a psychological interpretation of the testimony in order to reach a decision. There is a group of psychiatrists, psychologists, family therapists, counselors, and social workers who work regularly with the Tribunal as consultants.

Many times, the input of the expert witness is based on a thorough review of the written testimony in the case. In some cases, however, the Petitioner or Respondent may be asked to meet with the expert for a personal interview or even some testing. This is always an optional step for the Petitioner and Respondent, but the results of the interview or testing will always provide helpful input for the Judges and ensure the best decision in the case. The input offered by the expert witness is considered a confidential communication between that professional and the Judges. It is not made available to the parties.

Expert witnesses are not limited to mental health fields, but may involve an interpretation of the testimony by an expert in any field related to the grounds: social science, religion, medicine, cultural anthropology, etc.

Decision-making in the Case

Once the evidence-gathering stage of the trial is concluded, the decision-making stage begins. The Defender of the Bond is given time to compose a written statement, known as “Animadversions,” in which the Defender points out to the Judges any procedural irregularities in the case, any weakness or inconsistencies in the testimony, and any reasons why the validity of the marriage ought to be upheld, that is, why a Declaration of Invalidity should not be granted in the case. This important document is required in all cases, and the Defender of the Bond has an important role in guaranteeing that the Judges reach a just and equitable decision.

The Judges of a Tribunal base their decision entirely on the grounds in a case. The testimony of the two spouses is very important, as is the testimony of witnesses. Very often, because of their different viewpoints, the testimony of the Petitioner and Respondent will disagree on one or more important points. The Judges will depend on the witness testimony to clarify misunderstandings or disagreements. This is why it is crucial for a Petitioner or Respondent to ensure that their witnesses respond to the Tribunal.

The decision of the Judges centers entirely on whether the testimony supports the grounds on which the case is being judged. In the previous pages you saw that the grounds do not deal with moral judgments, but only on the facts – events, decisions, qualities, and behaviors. It is important to the Judges that the Petitioner and Respondent offer their input in the case with actual testimony. This provides a basis for proving or disproving the grounds and reaching an informed and just decision. For the Petitioner or Respondent, and for the witnesses, offering testimony is the only way to have input into the decision, since the Judges can consider only what is contained in the testimony before them.

Once the Judges adjudicate the case – considering all the testimony, the reports of any Court-appointed experts, and the comments

Intention against “The Good of Children” (*canon 1101*)

A valid marriage includes three essential “goods” – children, fidelity, and permanence. If one or both spouses entered marriage with the intention to exclude or restrict childbearing or starting a family, this ground can be considered. This can take several forms: an outright intention to have no children in the marriage, a delay or postponement of children for illicit reasons, sterilization or consistent use of birth control to avoid pregnancy. The result is usually that no children are conceived after the wedding day, or the number of children was deliberately and intentionally limited from the beginning.

- Did either you or your former spouse believe firmly that you had the right to determine when and if you would have children in this marriage?*
- Did either of you enter marriage with the intention to delay or postpone childbearing until some later time?*
- Was there a definite time or condition for having children later in the marriage, but not right after marriage (for example, after completing school, or after saving money, or after a certain number of years)?*
- Was there a decision before marriage to have no children together?*
- Even if there was a pre-marital pregnancy, was there the intention to have no other children in the marriage?*
- Was there a limit on the number of children you would have in the marriage? If yes to any of these questions, were there definite means taken to avoid pregnancy (for example, contraceptives or birth control medication or devices, abortion, sterilization by vasectomy or tubal ligation)?*

Intention Against “The Good of Permanence” (canon 1101)

A valid marriage includes three essential “goods” – children, fidelity, and permanence. If one or both spouses entered marriage with the intention to exclude the lifelong permanence of marriage, this ground can be considered. Marriage, by its very nature, is a permanent partnership that cannot be broken or dissolved by the spouses themselves. The marriage is invalid if one enters it with the intention to make the marriage only temporary, to keep divorce and remarriage as an option, or reserving the right to decide at any time to end the marriage.

- Did either you or your former spouse believe that you had the right to end the marriage at any time and possibly remarry someone else?*
- Did either of you intend a “trial marriage?”*
- Did either of you come from a religious background which taught that divorce was acceptable, perhaps under certain circumstances (for example, adultery, physical abuse, unhappiness, illness)?*
- Were either of you divorced and remarried several times before entering this marriage? If so, did that person view marital commitment in such a way that it necessarily included divorce as a possibility? Was divorce seen as an option for dealing with an unhappy marriage?*
- Was there a history of divorce in either your family or your former spouse’s, or among friends?*
- Did you sign a pre-nuptial agreement because you thought divorce would be an option?*
- Do you think the marriage would have been called off if you and your former spouse had been told that marriage was absolutely indissoluble, and that divorce was never possible?*

of the Defender of the Bond – the decision is placed in writing in a document known as the “Definitive Sentence.”

Reviewing the Definitive Sentence

The decision of the Judges is made known to the parties, and they are permitted to read the Definitive Sentence at the Tribunal during business hours. This procedure is known as the “Publication of the Sentence.” If either party lives outside the Diocese of Manchester, this review may be done at the Tribunal nearest them. No copies of the Definitive Sentence may be made, and no notes taken.

The Appeal

It is important to note that Church law itself provides for a process of appeal. The Petitioner, the Respondent, and the Defender of the Bond all have the right to lodge a formal appeal against the decision of a Judge if they believe that the testimony was not evaluated correctly. If a party lodges a formal appeal, he or she will be expected to provide witnesses and additional testimony to the Appellate Tribunal, and may be asked to appear there personally for a hearing or a deposition. The other party will be given the same opportunity. The process followed by the Appellate Court is nearly identical to that used by the Tribunal in reaching the first-instance decision.

Formal appeals may be made to The Appellate Tribunals for the Boston Province, or to the Roman Rota at the Vatican. If the Petitioner or Respondent lodges an appeal for a formal hearing, that person must pay the costs associated with preparing the case for formal review.

Special Preparation for a New Marriage

If the decision of the Tribunal is to grant a Declaration of Invalidity, and if this is upheld on appeal, then the parties are free to prepare for a new marriage. In many cases, the Tribunal offers special assistance to one or both of the parties to ensure that their marital preparation includes a frank discussion of the problems evident in their previous marriage. This special assistance can take several forms, but always involves the party and their intended spouse.

For cases in which a party is placed under Recommendation (*monitum*), the priest, deacon, or pastoral associate assisting that party in marriage preparations may be asked to discuss specific points with the couple during their marriage preparation sessions.

For cases in which a party is placed under Prohibition (*vetitum*), the couple will be asked by the Tribunal to meet with Court-appointed family therapist or counselor to discuss specific concerns together, so that the therapist or counselor can offer suggestions or help for strengthening the relationship and avoiding problems. Whereas the Tribunal defrays the cost of the initial visit, should the therapist or counselor recommend subsequent treatments, the couple preparing for marriage would absorb counseling fees for additional visits.

Lastly, the Tribunal may impose or request an additional time of preparation or condition that must be met before a new marriage is contracted.

Total Simulation of Marriage (*canon 1101*)

To simulate consent means to say one thing externally, but to intend something quite different internally. Total simulation of marriage means that one or both spouses, at the time of marriage, did not intend to enter a real marriage. Instead, something quite different was intended. This ground may be considered if one or both spouses “pretended” to marry, and did not intend to enter a genuine, lasting marriage.

- Was this an arranged marriage, that is, you and your former spouse were “told” to marry by someone else such as your parents?*
- Did you and your former spouse agree to marry for some reason other than being in love and wanting to marry one another?*
- Was there some reason you decided to go through a wedding ceremony without being in love (for example, to obtain citizenship, to escape your childhood home, or for insurance, welfare or financial purposes)?*
- If yes to any of these questions, did you separate shortly after marriage, or as soon as other conditions were met?*

Error Concerning the Sacramental Dignity of Marriage (*canon 1099*)

A person may enter marriage validly when he or she is in simple error (holding a false opinion) about the sacred character or sacramental nature of marriage between two baptized people. However, if one or both spouses entered marriage with an erroneous belief that marriage is simply a civil or secular matter and that it has no relation to the sacred for the baptized, this ground may be considered. This belief must have been firmly held, or in other words, marriage could not be conceived of in any other way than as civil or secular in nature.

- Did either you or your former spouse come from a family environment in which there was no practice of religion?*
- Did either of you come from a religious background which taught clearly that marriage is not a sacrament or not a sacred bond?*
- Did either of you firmly believe that marriage was merely a civil contract, having only civil effects, with no relationship to religion or the Church?*
- Were you married by a judge or justice of the peace or other civil official, because you did not want a church wedding?*
- Did either or both of you intend to enter only a civil contract of marriage, with no thought of religious overtones? If yes to any of the above questions, would that spouse have called off the marriage if the other person insisted on a church wedding, or insisted that marriage was a religious matter?*
- Did either of you believe so strongly that marriage was only secular in nature that you could never envision marriage as having some religious or sacred element to it?*
- Did either of you have a hatred or aversion toward religion?*

The Grounds

The following pages list the possible grounds indicating defective consent that can be used in a marriage case before the Tribunal. After a brief description of each ground, there is a list of questions relating to that ground. The Judges decide each case solely on the basis of whether the grounds are proven by the testimony submitted by the parties, their witnesses, and expert consultants. Every marriage case must have at least one ground.

For many, contemplating the grounds brings a flood of memories, both happy and sad. In a spirit of prayer and with confidence in God's grace, allow the following pages to help you understand how a Tribunal makes decisions in marriage invalidity cases.

Insufficient Use of Reason (*canon 1095, 1)**

To enter a valid marriage, a person must have the degree of reasoning ability sufficient to know and understand what marriage is and what he or she is doing at the time of marriage. Serious conditions, such as profound mental retardation, certain personality disorders or blackout states (caused by alcoholic intoxication, drug use, or seizure disorder), might prevent a person from possessing or using reasoning ability during the marriage ceremony. If one or both spouses lacked the use of reason during the wedding ceremony itself, this ground can be considered.

- Did either you or your former spouse abuse drugs or alcohol to the extent of suffering from blackout periods? If so, did either of you use drugs or alcohol before the wedding ceremony?*
- Were either you or your former spouse ever diagnosed with a very low intelligence or with a serious learning disability or a mental illness that caused blackout or delusional episodes? If so, did such an episode occur at the time of the wedding ceremony?*
- Did either you or your former spouse suffer from epilepsy and grand mal seizures? If so, did a seizure occur just before or during the wedding ceremony?*

Error Concerning the Indissolubility of Marriage (*canon 1099*)

For marriage to be valid, both spouses must agree to the absolute permanence of marriage. If one or both spouses entered marriage with an erroneous belief that marriage may be a temporary arrangement, that divorce was always an option, or that remarriage was always a possibility, this ground could be considered. The error could include the notion that marriage lasts only as long as the spouses decide, or only as long as they remain in love, or that the state has the authority to dissolve a marriage. This belief must have been firmly held, or in other words, marriage could not be conceived of in any other way than allowing for the possibility of ending or dissolving the marriage.

- Were either you or your former spouse reared in a home with no religious practice?*
- Were either of you from a family background in which there were multiple instances of divorce and remarriage?*
- Did either of your families consider divorce and remarriage acceptable or desirable?*
- Did either you or your former spouse believe that your marriage would not be permanent?*
- Did you sign a pre-nuptial agreement because you thought the marriage might not be permanent?*
- Did either of you accept the idea of a “trial” marriage, with the understanding that you could divorce if it did not work out?*
- At the time you entered this marriage, would you have said that you could divorce and remarry for a particular reason (for example, physical abuse, adultery, unhappiness, illness)?*
- If you and your spouse had been told that divorce and remarriage would be impossible for any reason, would either of you have backed out of the marriage?*
- Did either of you clearly believe that it was your right to divorce and remarry at will?*

Error Concerning the Unity of Marriage (*canon 1099*)

For marriage to be valid, both spouses must intend to be absolutely faithful to one another. If one or both spouses entered marriage with an erroneous belief that infidelity, polygamy or polyandry was possible, this ground could be considered. This belief must have been firmly held, or in other words, marriage could not be conceived of in any other way than allowing for infidelity or multiple spouses or sexual partners.

- Did either you or your former spouse believe that it was acceptable to have other sexual partners after marriage?*
- Was there anything in the family background to explain the belief that marriage was not an exclusive (totally faithful) relationship?*
- Were you or your former spouse reared in a home environment where there was sexual infidelity, or cohabitation, or several sexual partners?*
- Did either family consider infidelity or living together acceptable or desirable?*
- Had either you or your former spouse been unfaithful in previous relationships?*
- Were either of you reared in a home in which no religion was practiced, or a religion that accepted polygamy?*
- At the time you married, did you or your former spouse accept the notion of an “open” marriage?*
- Did either of you accept the idea of multiple sexual partners, or “exchanging” partners with others?*
- Were either of you unfaithful during your courtship or engagement?*
- Did either of you consider cohabitation or living together to be acceptable or desirable?*
- Were either or both of you sexually unfaithful during the marriage?*

Grave Lack of Discretion of Judgment (*canon 1095, 2°*)

To enter a valid marriage, a person must have use of sound reason and mature judgment. This means that the person is making a prudent and free decision, after careful judgment, to enter marriage with a particular person and that the decision is not impulsive or without forethought. If one or both spouses either lacked sufficient knowledge of marriage or failed to exercise mature judgment in choosing to marry, this ground can be considered. Because it requires a grave lack of discretion of judgment, this ground may be difficult to prove.

- Did either you or your former spouse have extremely little or no dating experience before becoming engaged?*
- Were either of you on the “rebound” from a broken engagement or previous marriage when you decided to enter this marriage?*
- Did you see marriage as simply “the next step” without much consideration?*
- Did the two of you date for only a brief time?*
- Was the decision to marry made impulsively or without much thought?*
- Did either of you make immature and impulsive decisions in other areas of life (career, finances, etc.)?*
- Would you say you really did not know one another well enough to marry when you did?*
- Was your decision to marry based on some pressing issue or circumstance (for example, a pre-marital pregnancy, difficult home situation, peer pressure, escape from another relationship)?*
- Did family or friends express serious concerns about this marriage and did you choose to ignore them?*

Incapacity to Assume the Essential Obligations of Marriage (Canon 1095 3*)

To enter a valid marriage, a person must have the psychological ability to take on and to live out the lifetime obligations of marriage. A person cannot consent to something that is beyond his or her psychological capacity to fulfill. Even if the condition became known or diagnosed only after marriage, if a person was afflicted at the time of marriage with a serious psychological or psychiatric condition that prevented him or her from assuming the obligation of marriage, the marriage was invalid. Proof of the condition must be provided, however, and often the Tribunal will require a current evaluation by a mental health professional. Because the ground requires incapacity and not merely diminished capacity, it may be difficult to prove.

- Were either you or your former spouse diagnosed with a serious psychological illness?*
- Even without a specific diagnosis, did either of you suffer from a serious mental illness at the time of your marriage?*
- Did either of you have any addictions at the time of the wedding (alcohol, drugs, prescription drugs, etc.)? If yes to any of these questions, did the illness or addiction prevent either of you from living out the commitment you made to each other or to your children?*
- At the time of your marriage, did either of you have any serious sexual disorder, serious questions about your sexual identity, or homosexuality? If so, did this affect the ability to live out the commitment to marriage?*

Fraud or Deceit (Canon 1098)

A person who enters marriage deceived by fraud, which is perpetrated to obtain the marital consent of the other person, married invalidly. Fraud is the intentional act of deception. It can be perpetrated by the other spouse or by a third party, but the end result is the same: one of the contracting parties consents because he or she was deceived into doing so. If fraud or deceit took place in order to make marriage happen, this ground can be considered.

- Did you or your former spouse intentionally misrepresent or conceal information necessary for the other person to make a well-informed marital decision?*
- Did someone else (a parent, for example) misrepresent or conceal information necessary for a well-informed marital decision?*
- Was the deception intentionally done in order to get the other person's agreement to marry?*
- If the deceit was later discovered, did it have an immediate effect on the marriage?*
- Did the separation or divorce occur because of this?*

Error Concerning a Quality of a Person (*canon 1097, §2*)

To enter a valid marriage, one must know the essential qualities of the person he or she is marrying. If, at the time of marriage, one spouse was mistaken about a quality directly and principally intended in the other spouse (almost as a condition for marriage), then this ground could be considered. This ground might apply if you or your former spouse intended to marry someone who possessed a certain quality (perhaps of a moral, social, physical, religious, psychological, or legal nature) and the primary reason for entering this marriage was the belief that the intended spouse possessed that quality. The intended quality must be of such a magnitude that without it, the person would not have married the other.

- Was there a certain quality or trait that either you or your former spouse were looking for in a prospective husband or wife (for example, a certain social status, marital status, education, a certain profession, religious conviction, freedom from addiction or disease, freedom from an arrest record)?*
- Did you or your former spouse consider that trait so important in a prospective spouse that you would marry only someone who possessed that trait?*
- Would this marriage have been called off if the other person did not possess that quality?*
- When it was learned that you or your former spouse did not possess that quality, did the other spouse react with shock or surprise?*
- Did you separate immediately afterward, or did your marital relationship change immediately afterward?*

Ignorance of the Societal Nature of Marriage (*canon 1096*)

To enter a valid marriage, a person must have some basic knowledge (*i.e.*, not be ignorant) of what marriage is all about. A necessary element of that knowledge is to know that marriage is a permanent partnership between a man and a woman. If a person truly has no knowledge that marriage is such a partnership, because of tragic or extremely dysfunctional circumstances in his or her personal or family background, this ground may apply.

- Did either you or your former spouse come from a family background where there were many divorces, separations, or live-in relationships?*
- Did either of you have the experience of growing up in several households whether among relations or foster parents?*
- Did either of you grow up in an institution, such as an orphanage? If so, can you say that there was never a role model for a happy or healthy marriage?*
- Can you say that either you or your former spouse did not know when you married that marriage is a permanent partnership?*
- Were either of you reared in an environment that was extremely sheltered (to an unhealthy degree)?*
- Were there any cultural factors that influenced your knowledge of what marriage was all about?*
- Were either of you surprised or shocked after marriage by what marriage was all about?*
- Did you separate or divorce quickly after discovering what marriage was all about?*

Ignorance of the Sexual Nature of Marriage (*canon 1096*)

To enter a valid marriage, a person must have some basic knowledge (*i.e.*, not be ignorant) of what marriage is all about. A necessary element of that knowledge is to know that marriage by its nature involves openness to children by means of sexual cooperation between the spouses. Although such ignorance is not presumed in persons beyond the age of puberty, this ground may be considered if one or both spouses were truly ignorant of this fact.

- Were either you or your former spouse extremely young when you began dating the other?*
- If so, was this dating relationship the only one before marriage?*
- Did either of you come from a family background where there was no discussion at all of sexuality?*
- Did either of you enter marriage with absolutely no understanding of human sexuality and sexual intercourse?*
- Were either of you reared in an environment that was extremely sheltered or sexually repressed (to an unhealthy degree)?*
- Were either of you surprised or shocked after marriage to learn about sexuality or sexual relations?*
- Did you separate early in the marriage because of an unwillingness to engage in sexual relations?*

Error of Person (*canon 1097, §1*)

To enter a valid marriage, one must know the person he or she is marrying. In other words, marital consent is exchanged with a specific man or woman, and it is essential to have true knowledge of who that person is. If one spouse made a substantial error in judgment concerning the true identity of the intended spouse, or in other words married the wrong person, this ground could be considered. The error in question is not about details of personality or behavior, but a serious error about the identity of the other spouse.

- Did you and your former spouse know one another for only a very short time before marriage?*
- Was your courtship at a distance?*
- Did you actually spend very little time together, alone, before marriage?*
- Was your intended spouse not the person you thought you were marrying?*
- Did you discover after marriage that the person you married was not, in fact, the person you intended to marry?*
- Did you react with shock or surprise when the error was discovered?*
- Did you separate immediately afterward, or did your marital relationship change immediately afterward?*