

Changes to annulment process explained

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Pope Francis chose Dec. 8 as the beginning not only of the Extraordinary Jubilee Year of Mercy, but as the date for the inauguration of changes in the church's annulment process.

Actually, nothing has changed in regard to the church's theology of marriage. Two key foundations remain the same: first, the consent of a man and a woman make marriage; and second, that the marriage of two baptized persons, whether Catholic or of other faiths, is automatically a sacrament.

The latter point needs clarification. The Catholic Church believes that not only the marriage of Catholics but also the marriage of any two baptized persons is a sacrament. Therefore, the marriage of two Lutherans or the marriage of a Presbyterian and a Baptist are sacraments. The reason is simple. The Catholic Church teaches, the couples themselves as baptized Christians are the ministers of the sacrament of marriage. They make the unique covenant that is the nuptial and permanent relationship that is marriage.

In church law, the marriage is considered valid until the contrary is proven. This essentially is the annulment process: an examination by church officials into the validity of a couple's marriage; in effect, the validity of their consent at the time of marriage.

The first annulment process considers a lack of canonical form; the Catholic Church requires that if at least one of the parties is Catholic, then the exchange of vows must take place before a duly authorized minister (priest or deacon) and two witnesses. If the marriage takes place without this requirement and without a dispensation from it, the marriage is invalid.

The annulment process in this situation is simply a documentary process, the invalidity of the marriage proven through valid documents. This may take between two to three weeks.

The second process is an annulment due to a prior bond of one's former spouse. If that person was validly married previously then that person is bound by the sacramental bond of marriage. Any subsequent marriage is invalid because they were not free to marry. This may take from two to three months.

The third process is the formal annulment process which involves a request to a marriage tribunal to examine the circumstances of a couple's marriage and the validity of their consent at the time of the marriage.

The ground or reason for this procedure can involve any number of reasons: an intention against openness to children, an intention against fidelity in the marriage, an intention against permanence of the marriage, a grave lack of due discretion of judgment or grave lack of maturity. All of these can serve as a ground for a decision on the part of the tribunal court in favor of the nullity of the marriage.

This can be a time-consuming and lengthy process and, at least before the Holy Father's changes, required a confirmation by a second court or tribunal.

The fourth process, a new one, involves the participation of the diocesan bishop himself. It expedites the process.

The changes legislated by the pope are a result of the worldwide consultation and subsequent recommendations of the first Synod on the Family held last year, which included making the annulment process more accessible and less time-consuming, and if possible, at little or no expense.

The changes are:

- A greater use of lay judges in the annulment process. A collegial court can now be constituted with one cleric judge and two lay judges. Previously two clerics and one lay person were required.
- The rule for the competency of the court has been simplified. A court is competent (authorized) to hear the case if any one of the following conditions are fulfilled: the marriage took place within that diocese; or if one of the parties (petitioner or respondent) lives within the diocese; or if the majority of the evidence is present in the diocese.
- The elimination of the requirement for an automatic appeal of an affirmative decision to a second court of review, which will significantly lessen the time needed for a final decision. Previously an affirmative annulment decision had to be made by two independent courts. The right of a respondent or the Defender of the Bond in the case to appeal is preserved and protected. In addition the right to appeal a decision to the Roman Rota itself remains intact.
- Previously two or more witnesses were needed to substantiate the evidence or facts of a case. Now the testimony of one competent and informed witness who is considered honorable and knowledgeable is acceptable as proof.
- The possibility of an expedited process. This is completely new to the process and was seen by the Holy Father as a further sharing in collegiality by the diocesan bishop that was called for in the Second Vatican Council. In certain cases where

both the petitioner and the respondent agree to seek a declaration of nullity and where the evidence is especially obvious, the parties can opt to have the diocesan bishop judge their case directly. The popular term given to these cases would probably be “no-brainer”; the marriage only lasted three weeks, the couple were too young and immature, etc. In many cases this will be a quicker, simple process. However, if the bishop decides he cannot give an affirmative answer, then the case is sent back to the tribunal for the formal process.

The annulment process is not automatic. The tribunal’s decision could be either affirmative or negative; rather, the process is the church’s pastoral response to examine whether or not a couple’s marriage covenant was in accord with the expectation of Christ and the church in regard to marriage. The process is meant to be a healing one that is pastoral, sensitive and just.

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