



The Tribunal Advocate

Roman Catholic Diocese of Boise

April 2011

Message from the Director

Mark Raper

As I write this note to all of our advocates, the season of Lent is quickly coming to an end, as we look forward to the gift of the Easter Season. I pray this has been a holy and productive Lenten season for all of those who work in the Tribunal ministry.

Beginning with this copy of *The Advocate*, and continuing for the next several issues, we will be focusing on "refresher" information that may come in useful for your ministry; especially if you rarely submit cases to the Tribunal.

As has always been the case, the staff of the Office of Canonical Affairs are here to assist you as best we can, whether by helping with a marriage case, or some other canonical question. We are always just a phone call away at (208) 344-1344. If you are in the area, you are welcome to drop in to see us any time. For those who don't know where we are located, you can find us on the first floor of the Diocesan Pastoral Center - 1501 S. Federal Way, in Boise.

You may also email me, Marisela or Colleen with your questions at mraper@rcdb.org, mbaca@rcdb.org, and ccunningham@rcdb.org with general marriage case questions (such as identifying what type of case you are working with), permission and dispensation questions or other canonical questions. If you are seeking information about a particular case, we cannot guarantee the security of the email, especially if you are using a service such as yahoo, hotmail or gmail. In those instances, please call us directly.

Thank you for all you do for the Tribunal ministry and the Church in Idaho.

Mark

Office of Canonical Affairs Marriage Tribunal

Mailing Address
1501 S. Federal Way
Suite 400
Boise, ID 83705

Location
First Floor

Phone
208.344.1344

Fax
208.344.1772

Hours
9-5, Monday-Friday

TRIBUNAL STAFF

Judicial Vicar

V. Rev. Henry Carmona JCL

Director

Mr. Mark Raper, JCL, MCL

Case Managers

Ms. Colleen Cunningham

(odd Formal cases, Second Instance, Competence)

Ms. Marisela Baca

(even Formal cases, Permissions, Dispensations)

OCA Web Page

Tribunal forms are on the Diocesan website - both English and Spanish versions. You will find the most current version of the nullity petition at: <http://www.catholicidaho.org/en/DiocesanOffices/Office%20of%20Canonical%20Affairs/Pages/Getting%20Started.aspx>

For those preparing couples for marriages: pre-marital paperwork, including dispensation and permission forms may be found here for download:

<http://www.catholicidaho.org/en/DiocesanOffices/Office%20of%20Canonical%20Affairs/Pages/DispensationandPermissionForms.aspx>

Understanding of Marriage

The Catholic Church believes and teaches that marriage is a covenant by which a man and a woman fully, consciously, and freely choose to establish between themselves a permanent, exclusive, mutual partnership of the whole of life. This belief applies to Catholics and non-Catholics alike. The Church teaches that marriage, by its nature, is ordered to the good of the spouses and the procreation and education of children. Because it is ordered to the good of the spouses, the development of interpersonal intimacy, not simply biological intimacy, is viewed as essential to the marital relationship. There must be a giving and accepting on the part of each toward the other. This involves a twofold action: Each of the spouses makes an unqualified gift of self to the other and, in turn, makes an unqualified acceptance of the other. For the life of the marriage to grow and continue, the two must be faithful to one another and work unceasingly to build a union that will endure. Because marriage is also ordered to the procreation and education of children, the couple must be totally open to having children. To exclude or unduly limit children is contrary to this teaching.

For a much more detailed understanding of the Church's teaching on marriage, you are encouraged to refer to the Second Vatican Council Pastoral Constitution *Gaudium et Spes* (The Church in the Modern World), paragraphs 47-52, as well as the Catechism of the Catholic Church.

Defect of Consent

CONSENT makes the MARRIAGE. This is a basic principle in marriage cases. A case of defect of consent arises when the circumstances prevailing at the time of the exchange of consent rendered that consent invalid. A person must possess a basic capacity for marriage. In twentieth century Western society, one would have to question seriously the capacity of, say, a seventeen year old boy and a sixteen year old girl who are very immature and have no means of livelihood to exchange the kind of minimal level of marriage consent demanded of a life-long commitment, in good times and bad, in sickness and in health, for richer or poorer, for better or worse, until death do them part. Admittedly, the Church has established that for a valid marriage to take place the minimum age for a man is sixteen years of age and that of a woman is fourteen. But this does not necessarily mean that every sixteen-year-old male person and every fourteen-year-old female person are capable of entering a valid marriage at such young ages. However, common sense tells us that with the normal pressures of modern living in this day and age, a wedding between very young people has little prospect of lasting success.

A person must be free to undertake marriage without undue outside pressures (e.g., pressure from parents because of a pregnancy or a sexual liaison) or deceit (withholding of certain facts from the other fiancée, because of fear that the courtship would be terminated). A fiancée may be making undue demands upon a prospective partner (regarding future prospects). Psychological factors of a serious nature may be present which could raise questions about a particular individual's basic capacity for marriage with any member of the opposite sex. Is a person simulating marriage (e.g., the "green card" marriage in which a non-U.S. person marries a U.S. citizen with the sole purpose of facilitating the procurement of a visa to become a permanent resident of this country)? Does a person enter marriage on his/her own terms (contrary to an intention to remain faithful or to permanence or to openness to the procreation and education of children)? Sexual orientation issues might also have to be addressed.

These are just some of the issues which create serious problems leading to the complete collapse of a marriage. That is why, in the case of a Catholic in particular, a very thorough pre-marriage preparation is necessary. At times, priests, deacons and other pastoral ministers experience great difficulty in eliciting the cooperation of engaged couples to take pre-marriage preparation seriously. The focus instead is on the wedding day, the floral arrangements, the reception, the guest list, etc., and not on the fact that the wedding day is the first day of the rest of their married life until death do them part. That is one of the reasons why most dioceses have a minimum time frame of four to six months for marriage preparation in the Catholic Church. Even then the assumption is that couples have been courting over a sufficiently long period of time to enable them to come to a mature decision about the wisdom and desire to consider the possibility of getting married to each other. Pre-marriage preparation is one of the many very serious, taxing and privileged undertakings in which a priest, deacon or other pastoral minister is involved and it also demands the fullest of cooperation and seriousness from the engaged couple. Short cuts and evasions in pre-marriage preparation can come home to haunt a married couple in later years.

Divorced Catholics and the Sacraments

If a Catholic has divorced their spouse and **HAS NOT entered into a new union they are not excluded from the sacraments - including the Eucharist.** In the case of reception of the Eucharist, they simply must be properly disposed (in a state of grace), as any other Catholic is required to be, in order to receive the Body and Blood of Christ.

If a Catholic has divorced their spouse and **HAS entered into a new union *without* the benefit of a decree of nullity** they are excluded from the sacraments (including the Eucharist) until such time that their situation is regularized by the Church.

For more information, Catholics are encouraged to talk with their parish priest, or contact the Office of Canonical Affairs - (208) 344-1344.

Wishing you Peace this Easter Season

Declarations of Nullity (Annulments)

Any persons having presented themselves to others as married, are presumed to have been married as the Church views marriage (see link Understanding of Marriage). For that reason, any person having been married before must petition to a Church court to have the previous union investigated to see if there is a reason why the exchange of vows did not constitute valid matrimonial consent. Divorce in itself is a termination of the "civil union" of the couple; even then, in the Church's understanding, parties are still married under Divine Law. For this reason, if a divorced person enters into a subsequent civil union, they remove themselves from the Sacraments (but not the Church). Otherwise, a divorced Catholic who has not remarried can continue to receive the Sacraments.

Once an investigation shows there was not a valid consent according to Church Law, a Decree of Nullity is issued. No Church marriage is allowed unless and until a Final Affirmative Decree has been obtained. Since there is no set time for the process and there is no assurances of an affirmative decree, no date can be set for a Church wedding until a Decree of Nullity has been issued by the Tribunal.

Either of the two parties of a previous union can petition the Church to consider declaring the union as not valid under Church Law. A union not valid under these conditions is considered "null", i.e., there was not a valid consent. The Catholic Church's declaration of a marriage being "null" has no effect on the status of the union under Civil Law nor does it have an effect on the status of Children of the union. An individual "petitions" to the Church court in the diocese in which they live; if the petition needs to be handled elsewhere, the local Tribunal will assist in initiating the process. In the Diocese of Boise, a petition is started with assistance of trained individuals in the local parish. Any priest, deacon, or trained lay advocate in the Diocese of Boise may provide this assistance.

Non-Catholics and Annulments

If a single Catholic wishes to marry a non-Catholic, who is divorced, the non-Catholic's first marriage must be annulled even though they are not members of the Catholic Church and were married in another church. Canon Law requires the Tribunal process.

A wedding between a non-Catholic single man (who had never been married before) and a non-Catholic single woman (who had never been married before) is regarded as a valid marriage. The Catholic Church presumes the validity of such marriage and this presumption remains in place until and unless the contrary can be proven by means of an ecclesiastical decree of nullity issued by the Catholic Church. This is the Catholic Church's understanding and teaching with regard to marriage. Therefore, the Catholic Church cannot and does not presume that the non-Catholic divorced party is free to enter a new marriage unless the canonical status of the previous marriage can be determined in favor of the non-Catholic.

If the Catholic chooses to marry the non-Catholic without a decree of nullity, the marriage is regarded as canonically invalid because of the presumption in favor of the validity of the non-Catholic party's prior bond of marriage.

Short vs. Long Marriages

Every case is unique and different. Marriage, whether of a short or long duration, is presumed valid until and unless the contrary can be proved with moral certitude. The proofs are determined by a Tribunal process. It does not matter what the length of the marriage was. Morally certain proofs must be established.

A first reaction to a short marriage is that something may have been radically wrong for it to collapse so quickly. But this is only a presumption and it can only be over-ridden by morally certain proofs to the contrary. Certainly, a marriage of long duration (whether or not children were born of the union) can be more difficult to address. Why did the union endure for so long? The procreation, upbringing and education of a family all suggest a loving, viable and committed relationship between the parents, in particular.

The following analogy might be helpful. Remember it is only an analogy. When the Titanic set sail from England in April of 1912 for its voyage across the Atlantic, it is probable it would have safely reached New York had it not collided with the iceberg. In other words, it was a worthy seagoing vessel capable of all of the normal encounters with which could be anticipated for any ship on the high seas. The cause of the failure was the collision with the iceberg. Had there been no iceberg, the ship would have had a viable seagoing life. The difficulty in this case was that the presence of the iceberg constituted the setting that caused the ship to sink so quickly. Had the collision with the iceberg been avoided, the ship would have reached its destination safely. The matter of its seaworthiness would not have arisen nor would there have been any question about its capacity to fulfill its function as a ship.

On the other hand, if below the waterline, the ship has a serious flaw that will not render it seaworthy, that vessel will be incapable of fulfilling its basic function safely and reliably. In other words it should never be released to sail because it is destined to sink, and will in due course sink, because it is rendered incapable of staying afloat due to the inherent difficulties it will encounter and be unable to cope with in the course of its seagoing life. Ultimately it is going to sink because the basic flaw under the waterline has rendered it incapable of staying afloat. Defect of consent can be likened to that basic irreparable flaw under the waterline.

In brief, if the evidence fails to show such a defect (i.e., if the evidence shows that the ship sank because of the iceberg), then the validity of the marriage must be upheld. The icebergs of life do not constitute grounds for a declaration of nullity by the Church.

In other words, no matter what the length of the failed marriage, the Tribunal process must be able to unearth with moral certitude a basic (negative) condition which rendered invalid the marriage in question at the time of the exchange of marital consent between the bride and groom.

While US Tribunals are criticized for granting too many decrees; in fact,

"In the past twenty-five years, there has been a 57% decrease in declarations of nullity given in the United States"

(from presentation at the Canon Law Society of America 2010 Convention)

Thank you for taking the time to complete and collect all of the necessary documentation for marriage dispensations and permissions. My job is to assist you in presenting this completed packet of forms and documents to the Chancellor as is required by the directives set forth by the Chancellor's Office.

Please use revised forms. These have the following code on the bottom right hand corner of the page: **Rev. 2/2009 (updated forms may be obtained from the OCA Web Page):** <http://www.catholicidaho.org/en/DiocesanOffices/Office%20of%20Canonical%20Affairs/Pages/OfficeofCanonicalAffairs.aspx> or you may contact our office and I can mail a new packet of forms to you.

Please allow at least 2 weeks for the processing of your request. If there is a request which requires immediate attention, please contact me at the Tribunal Office. If your request needs to be mailed to a parish outside of the Diocese of Boise, please allow 3 to 4 weeks for processing.

Forms that need to be submitted and the documentation required:

Form B: (Front Side)

Date of Wedding: (Must be filled out) If this is a *Validation* please indicate.

Groom: (Full Legal Name) i.e.: Joseph Michael as opposed to Joe M)

Bride: (Full Legal Name) Same as above.

Name of Person arranging marriage, name of parish and city of parish must be filled in.

Please mark the boxes that apply to your request. Remember that *Mixed Religions* (Permissions) option requires the proof of non-Catholic baptism. If you are unable to obtain this documentation, please mark the *Disparity of Worship* option.

Please list the reason for your request.

Please attach to Form B the following: **Completed Forms A (2)** Bride/Groom, **Completed Forms C (2)**, Baptismal Certificate with *Notations* issued within the last 6 months and copy of a Decree of Nullity or Death Certificate are required if there was a previous marriage. Dispensations and/or Permissions will not be granted by the Chancellor's office without proper documentation/forms noted above.

Form B: (Back Side)

Please make sure the Catholic party and the person arranging the marriage sign, date and check the box relating to the non-Catholic party.

(The **completed** front side and back side of this form will need to be mailed back to the Tribunal Office immediately after the wedding ceremony, Please)

Form A (2) – one for Bride – one for Groom: Please complete the entire Form; make sure to list the name of the Priest or Deacon who will preside over the wedding; please have the Parish Pastor complete the delegation portion of one of the Forms A prior to submitting to the Tribunal if this is pertinent. (ie. All deacons -- priests not assigned to the parish where wedding will take place)

Form C (2) – one witness each for Bride and Groom: Please complete the entire Form. Question number three (3) deals with prior marriages. Does not refer to current marriage where Validation is requested. Witness should be someone who has known the party long enough to attest to their prior marriage history. Parents, brothers, sisters, aunts, uncles, friends from before the party was old enough to marry. **Please see note on the bottom of the form as it refers to Canon 1066 relative to witnesses.**

Form F: Dispensation from Canonical Form – i.e.: if marriage will be witnessed by a non-Catholic Minister. (Please make sure to attach completed Forms A, B and C)

Please note that if you are requesting permission for a Catholic and a Non-Catholic party to be married outside of a Catholic Church, please use Form B. A letter to the Bishop must accompany this request with a reason as to why you are making this request.

Also, in cases where the couple is marrying outside of their parish, the couple must submit a letter from their pastor giving them permission to do so.

Please do not hesitate to contact me if I may be of any assistance. As always, I look forward to working with you.

Prior to submitting a formal case, the Petitioner must contact his/her witnesses for permission to submit their names and addresses to the Tribunal. At that time, the Petitioner should notify the witnesses that there is a point in the case when parties are given the opportunity to read the available testimony—Publication of the Acts—and the names of the witnesses will be published to both parties. At Publication, each party may then send a written request to view the available testimony. If at least one witness requested confidentiality in their written testimony, all witness testimony would be summarized. As noted above, confidentiality does not mean that witness names are withheld at Publication of the Acts. For the summary, the issues noted in the testimony would be addressed; however, particular statements would not be attributed to any particular witness.