

DECLARATIONS OF NULLITY PROCESSES

TABLE OF CONTENTS

| | |
|--------------------------------|---|
| What is Canonical Form | 1 |
| Lack of Canonical Form Process | 1 |
| The Documentary Process | 2 |
| The Formal Process | 3 |

There are three types of processes: lack of canonical form, documentary and formal.

What is Canonical Form?

1. Those marriages are valid which are contracted before the local ordinary or pastor, or a priest or deacon delegated by either of them... and before two witnesses. (c. 1108) In the Diocese of Dodge City, the faculty has been granted to parochial vicars to assist at marriages within the boundaries of the parish to which they are assigned.
2. In addition to the priest or deacon who serves as an authorized witness, at least two additional witnesses are essential for a valid celebration of marriage. The only function of the two witnesses is to attest to the fact that the marriage was legitimately celebrated. Therefore, there is no requirement that either of the witnesses be Catholic or baptized.
3. Canonical form must be observed if at least one of the parties was baptized in the Catholic Church or received into it and has not defected from it by a formal act. (c. 1117)
 - a. The fact that a person was not raised in the Catholic Church after baptism or has lapsed from the active practice of the faith does not exempt him or her from the obligations of observing canonical form.
 - b. In March 2006 the Pontifical Council for Legislative Texts published a document clarifying what is meant by “an act of defection from the Catholic Church.” This is more than a mere lapsing from the practice of the faith. Rather, it is a juridic act that includes: the internal decision to leave the Catholic Church, the realization and external manifestation of that decision, and the reception of that decision by the competent ecclesiastical authority.

Lack of Canonical Form Process

1. As noted above, this kind of process always involves a baptized Catholic (or someone received into the Catholic Church). The party must have been Catholic (or received into the Catholic Church) at the time of the marriage.
2. Although it may appear that a Catholic party did not marry in the Catholic Church, care must be taken because some process may have been followed in order to recognize this marriage in the Catholic Church.
 - a. It is possible that the parties were prepared for marriage by a Catholic priest or pastoral minister but sought and received a dispensation allowing the marriage to be celebrated in another church before someone other than a priest or deacon.
 - b. If no dispensation from canonical form had been granted, the priest or pastoral minister working with the petitioner then needs to inquire whether this marriage had subsequently been celebrated in the presence of a priest or deacon (i.e., convalidated) or whether the marriage had been “blessed” or “fixed up” (i.e.,

sanated). If the marriage had been convalidated or sanated, then a formal annulment process will need to be followed.

3. Forms and documents needed:
 - a. Complete the green form entitled *Administrative Procedures regarding the invalidity of a marriage in which the form of marriage, required of Roman Catholics was not observed.*
 - b. A recent (dated within six months) copy of the Catholic party's baptism certificate, including sacramental notations. If a marriage has been convalidated or sanated, it should be noted on the back of the baptism certificate. If not, there will be no notation of marriage, and thus this is one part of the "proof" that canonical form was not followed by the Catholic party.
 - c. A copy of the civil marriage license.
 - d. A copy of the final divorce decree.

The Documentary Process

This is a juridic process in which the nullity of a marriage is established principally by means of a document that is not subject to contradiction.

1. The documentary process may be employed only for cases when the nullity of marriage is due to:
 - a. the existence of a diriment impediment (cc. 1083-1094) that has not been dispensed (cc. 1078-1082);
 - b. a defect of legitimate form that was not dispensed (i.e., when legitimate form was attempted but something was lacking that affected the validity of the marriage [e.g., two witnesses were lacking]);
 - c. a defect of a valid mandate of a proxy (c. 1104-1105)
2. The formalities of the ordinary formal process are omitted except for the citation of the parties and the intervention of the defender of the bond.
3. Forms and documents needed:
 - a. Complete the white consultation form (names of witnesses may be omitted)
 - b. If one of the parties is Catholic, a recent copy of the baptism certificate with notations.
 - c. Copy of civil marriage license
 - d. Copy of final divorce decree
 - e. *other documents providing proof of the invalidity of the marriage

The following are some examples of cases that could be done with a documentary process:

Ligamen (Prior Bond) (c. 1085)

1. The respondent has been validly married prior to the marriage with the petitioner (and that first marriage of the respondent has not been declared invalid by an ecclesiastical tribunal).
2. The additional document needed (e above) is a copy of the civil marriage license of the respondent and his/her first spouse.
3. A one-page questionnaire pertaining to the respondent's first marriage is given to the petitioner and the respondent for completion.

Lack of Disparity of Cult Dispensation (c. 1086, §1)

1. A Catholic party married an unbaptized person without having been granted a disparity of cult dispensation.
2. The additional document needed is a copy of the prenuptial investigation which will indicate the non-baptism of the one party and the lack of the granting of the dispensation.

Defect of Legitimate Form (Priest not delegated to witness the marriage) (c. 1108, §1)

1. The priest who witnessed the marriage was not legitimately delegated.
2. The additional document needed is a copy of the prenuptial investigation which will indicate the name of the priest who was the intended witness, or it will indicate if a particular priest was delegated to witness.
3. The civil marriage license (the signature of the priest) will also provide proof.

The Formal Process

In this process the investigation looks into the consent and the intention of each party at the time of marriage.

1. Procedures – The formal process is governed by the canons on *The Contentious Trial* (cc. 1501-1670) and canons on *Certain Special Processes: Marriage Processes* (cc. 1671-1707).
2. Circumstances which invalidate consent – Since consent is an act of the will, all defects of consent ultimately invalidate a marriage because of their impact on the will. Valid consent requires the harmonious interaction of all of a person's mental faculties—the cognitive, the critical or deliberative, and the volitional.
 - a. consensual incapacity (c. 1095)
 - i) insanity – mentally impaired or retarded
 - ii) lack of discretion of judgment – may include grave immaturity, impulsive decision, premarital pregnancy, dysfunctional family of origin, adult children of alcoholic (ACOA), etc.
 - iii) incapacity – may include personality disorders, psychosis, alcoholism, violent behavior, compulsive or addictive behaviors, etc.
 - b. ignorance (c. 1096) – ignorance that marriage is a permanent partnership between a man and a woman and ordered to the procreation of offspring by means of some sexual cooperation
 - c. error of person or error of quality of person (c. 1097)
 - d. fraud or imposed error (c. 1098) – one party deceives the other in order to enter marriage
 - e. error of law (c. 1099) – error concerning indissolubility or sacramental dignity of marriage
 - f. simulation or exclusion of some essential element or property of marriage (c. 1101, §2) – simulation or exclusion of partnership of life, right to children, fidelity and permanence
 - g. conditional consent (c. 1102) – a decision to marry is based on the future...some circumstance or condition without which the marriage would not have taken place
 - h. force and fear (c. 1103) – how free was the person to consent? Force includes coercion or threats. Fear includes reverential fear (such as between parent and child). The force or fear must be the cause or reason the person consented to marriage.

3. Forms and documents needed:

- a. Consultation Form – provides all the pertinent information (names of the parties, baptism information when applicable, date and place of marriage, date and place of divorce, a brief statement why the petitioner believes the marriage is invalid, names and addresses of knowledgeable witnesses, signatures of petitioner and advocate.
- b. Marital History questionnaire to be completed by the petitioner (If this marriage was a civil marriage later convalidated, do not use the regular Marital History questionnaire. A tailored questionnaire with pertinent questions about the convalidation is available from the Tribunal Office).
- c. Advocate Appointment form
- d. If one or both parties is Catholic, a recent (dated within six months) copy of the baptism certificate with other sacramental notations
- e. Copy of civil marriage license (or sacramental certificate if they were married in a Catholic Church)
- f. Copy of the final divorce decree