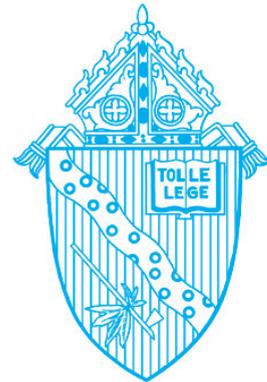


A TIME FOR HEALING

PROCEDURES
OF THE
DIOCESAN TRIBUNAL



DIOCESE OF KALAMAZOO

INTRODUCTION

A divorce is an experience like no other, and nothing can prepare a person for the pain and suffering that accompanies it. A divorce is not just a one-day event of signing the court decision. It is a process. It is the result of a series of events which erode the relationship between two spouses. After two people have invested a part of their lives, their money, their emotions, their hopes and dreams in another person, then the end of that relationship is a traumatic experience. The period of adjustment after a divorce can be either positive or negative, but it is always difficult.

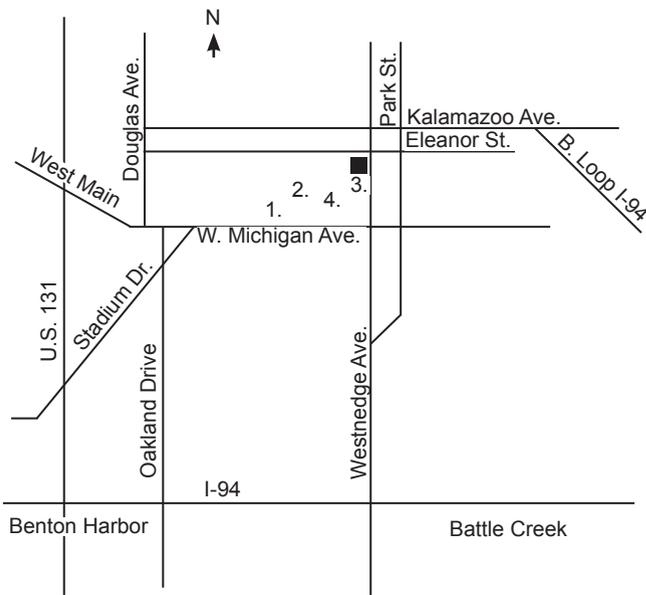
The Catholic Church is concerned about those who have experienced the pain of divorce. It seeks to minister to them, while at the same time it upholds the value of the permanence of a genuine sacramental marriage.

In the Diocese of Kalamazoo, the Tribunal is an agency which serves the divorced. This includes those who are divorced and wish to remarry, those who are divorced and have already entered a second union, and those who may simply wish to clarify their own situation in the Catholic Church.

Soon after a person has obtained a civil divorce or dissolution, it is strongly suggested that he or she consider beginning this process of healing, provided by the Tribunal, even if there is little or no thought about a marriage in the near future. A declaration of nullity or a dissolution of a former marital bond often helps a person spiritually and psychologically during the adjustment period immediately following a divorce. Furthermore, the recollection of pertinent facts is usually better, and the availability of knowledgeable witnesses is more likely. All in all, there may be a greater motivation to undertake the demands of the process during the adjustment period rather than years later. This suggestion should at least be discussed with the person's confessor, spiritual director, or advisor before making a final choice in the matter, **provided there appears to be a reasonable basis to enter a petition for nullity or dissolution.**

For further information you may contact the Tribunal Office Monday through Friday between 9:00 a.m. and 12:00 p.m. or 1:00 p.m. and 3:30 p.m., **Eastern Time at 269-349-8714 ext. 115.** Please ask to speak with a tribunal staff member. You may send a written inquiry to:

Diocesan Tribunal
Diocese of Kalamazoo
215 North Westnedge Avenue
Kalamazoo, MI 49007-3760



1. CATHEDRAL OF ST. AUGUSTINE
 2. ELEMENTARY SCHOOL
 3. PARKING
 4. CATHEDRAL CENTER
- PASTORAL CENTER (CATHOLIC DIOCESE OF KALAMAZOO)

■ Diocesan Tribunal is located in the Pastoral Center at **215 North Westnedge.**

TRAVELING FROM:

WEST - TAKE I-94 TO KALAMAZOO. GO NORTH ON U.S. 131 TO STADIUM DRIVE. TRAVEL NORTHEAST ON STADIUM DRIVE TO W. MICHIGAN AVE. TURN ONTO W. MICHIGAN AVE (4 MI. FROM RT. 131). ST. AUGUSTINE'S CATHEDRAL IS ON THE LEFT WITHIN THE FIRST BLOCK. TURN LEFT ON PARK ST. TURN LEFT ON ELEANOR ST. TURN LEFT ON WESTNEDGE AVE. THE PASTORAL CENTER IS ON YOUR RIGHT.

NORTH OR SOUTH - TAKE U.S. 131 TO WEST MAIN OR STADIUM DRIVE EXITS. GO EAST UNTIL YOU REACH W. MICHIGAN AVE. ST. AUGUSTINE'S CATHEDRAL IS ON THE LEFT WITHIN THE FIRST BLOCK. TURN LEFT ON PARK ST. TURN LEFT ON ELEANOR ST. TURN LEFT ON WESTNEDGE AVE. THE PASTORAL CENTER IS ON YOUR RIGHT.

EAST - TAKE I-94 EAST TO KALAMAZOO BUSINESS LOOP. TRAVEL NORTHWEST ON THE BUSINESS LOOP, WHICH CROSSES INTO KALAMAZOO AVE. TRAVEL WEST ON KALAMAZOO AVE. TO WESTNEDGE AVE. TURN LEFT ONTO WESTNEDGE AVE. THE PASTORAL CENTER IS ABOUT 1 BLOCK SOUTH ON YOUR RIGHT.

1. WHAT IS A FORMAL DECLARATION OF NULLITY?

A declaration of nullity is a formal statement by the Catholic Church that after adequate proof a particular marriage was never a binding (sacramental) union in the eyes of God and the Catholic Church. In other words, it asserts that one of the essential elements of a valid marriage according to **Catholic** doctrine or discipline was lacking **from the very beginning**. Therefore, the couple is no longer held to that union terminated by divorce. However, it does not deny that there was a **semblance** of a marriage, nor does it necessarily mean that either party entered the relationship with some moral fault. After adequate preparation one or both parties may be permitted to marry according to the rites and discipline of the Catholic Church.

2. DOES IT HAVE ANY EFFECT UNDER CIVIL LAW?

In the USA an ecclesiastical declaration of nullity has no civil effects. Furthermore, a civil divorce or dissolution must have been obtained before one may petition the Church for a declaration of nullity. One reason is to avoid alienation of affections litigation.

3. DOES A FORMAL DECLARATION OF NULLITY AFFECT THE LEGITIMACY OF CHILDREN?

NO. Church law specifically states that the children are and remain legitimate. In addition, a tribunal decision has no effect on the **civil** legitimacy of any children previously conceived. Nor does it deny the fact of paternity.

4. WHO MAY APPLY FOR A FORMAL DECLARATION OF NULLITY?

Every person who has a legitimate interest has the right to request the Church to investigate the probable invalidity of his or her previous marriage. The application must be directed to a tribunal that has the proper jurisdiction to process the case.

The jurisdiction may be determined in one of several ways: (a) the Tribunal of the diocese where the marriage took place; (b) the Tribunal of the diocese where the former spouse has a domicile or quasi-domicile; (c) with proper permission, the Tribunal of the diocese where the person making the request has a domicile. [A diocesan domicile is the diocese where a person has actually lived for at least five years or intends to live permanently within the foreseeable future.]

marry a Catholic who wants to remain an active member of the Catholic Church; or
- a Petitioner who is Catholic was validly married to an unbaptized person, but now wishes to enter a sacramental marriage with a baptized person. Again the Tribunal will contact the Petitioner to explain the requirements for this unique type of case.

24. HOW MUCH DOES IT COST?

A person with a legitimate interest always has the right to present a case to the Tribunal. All cases are treated equally, regardless of the payment of a fee. The Petitioner is asked to help defray the full costs of processing a case by making a partial contribution. **It is not a payment for a declaration of nullity or a dissolution of marriage.**

Ordinarily, the Petitioner reimburses the parish or agency which paid the fee when the case was formally accepted. That parish or agency may agree to waive the reimbursement at the Petitioner's request. Normally, a simple statement that one cannot afford the fee is sufficient. The fees may range between \$30.00 and \$350.00. The Field Advocate will inform the Petitioner of the current fee for the particular type of case.

impediment or obstacle.

Ordinarily, an impediment is an obstacle to a valid marriage. Impediments to marriage include: physical impotence (but not sterility); marrying while under the legal age; a Roman Catholic marrying a non-baptized person without the proper permission; attempting marriage after ordination, or after taking a public perpetual vow of chastity; and marriage to certain persons related by blood, by marriage, or by adoption.

Another impediment, called “ligamen,” occurs when a marriage is attempted by a person who is already validly married. If the spouse in the first marriage was still alive at the time of the second marriage, and the person has not received the proper declaration of nullity from the first marriage, the second marriage is then invalid. These cases normally involve two people who are not members of the Catholic Church.

Finally, the Catholic Church has various laws to be followed for the celebration of the wedding itself. If a priest or deacon lacks the required authorization to witness the marriage, or two witnesses were not present, the marriage is invalid. These are called “defective form” cases.

23. WHAT ARE “PRIVILEGE CASES?”

A “Pauline Privilege” case is given the designation because of a case described by Saint Paul in 1 Corinthians 7:12-15. It deals with the dissolution of a marriage in which neither party was baptized at the time of the wedding. Additionally, the Petitioner must have received Christian baptism or sincerely desire to be baptized a Christian. The Bishop or his delegate processes these cases after the standard application form has been submitted to the Tribunal.

A “Privilege of Faith” case is a special request made to the Pope for the dissolution of a **non-sacramental** marriage for a serious reason in “favor of the faith” of one of the parties. At least one of the parties must not have been baptized during their common married life.

There are three examples of a decision being made “in favor of the faith.”

- a Petitioner sincerely wishes to join the Catholic Church; or
- a Petitioner (not a prospective Catholic) wishes to

5. WHAT ABOUT PEOPLE WHO ARE DIVORCED BUT NOT MEMBERS OF THE CATHOLIC CHURCH?

A properly celebrated marriage between two people, even who are not Catholics, is always presumed to be a valid marriage. Therefore, if a divorced non-Catholic desires to marry a Catholic party, there must be an examination of the former marriage to determine if it is null or may be dissolved according to Church law or doctrine. This is necessary before a Catholic marriage may be celebrated because the Catholic Church does not recognize the dissolution of marital bond by a **civil** jurisdiction, in as much as God is the author of marriage and not a civil government.

6. HOW IS THE PROCESS STARTED?

An application is completed by the Petitioner (the one making the request). Ordinarily, a Field Advocate is to witness the signature on the application. Then this application is sent to the tribunal office, where it is scrutinized to determine the appropriate procedures that are to be followed according to the type of case. (Applications are available at all parish offices throughout the Diocese.)

If a formal procedure is required, the application and a packet containing information, a questionnaire, and some forms for signature are sent to the Petitioner. The questionnaire is filled out by the Petitioner. After all forms in the packet have been completed, the Petitioner meets with the Field Advocate who assists with the final preparations.

7. WHO IS A FIELD ADVOCATE?

Field Advocates are specially trained persons (laity and clergy) throughout the diocese who assist in various ways with the **preliminary** preparation of cases for the Tribunal. Likewise, the Field Advocate is the ordinary liaison for the Petitioner during the entire processing of the case by a Tribunal Judge. Consequently, in most cases the Petitioner should refer all questions, etc. to the Tribunal **through the Field Advocate**. This also benefits any Petitioner who cannot readily contact the Tribunal during regular business hours. Moreover, this prevents violations of confidentiality when **others** seek information on a case.

8. HOW AND WHEN IS A CASE FORMALLY ACCEPTED BY THE TRIBUNAL?

After the Tribunal receives the packet, the case is assigned to a judge. The Judge reviews the materials to determine that there is sufficient reason to accept the case. The judge also makes sure the Tribunal still has the proper jurisdiction to accept the case (see #4 above) or will obtain the necessary permission. After all the requirements have been satisfied, the Judge formally accepts the petition. **The formal acceptance of the petition marks the actual beginning of the process.** The Judge notifies all the parties and court officials of this fact.

A special number is assigned to each case (K....-....). It should be used as a reference number whenever the Tribunal is contacted, whether by letter or phone, because cases are filed **by number** and not by names.

9. WILL THE FORMER SPOUSE BE CONTACTED?

YES. In order to protect his or her rights, the Judge **must inform the former spouse** (the Respondent) that an inquiry has been started. The Respondent is always offered the opportunity to participate in the proceedings. The cooperation of the former spouse is always encouraged. **The only exception** to this rule occurs when the Respondent is laboring under a psychosis. However, normally the progress of a case is not hindered if the Respondent chooses not to participate.

10. WHAT IF THE ADDRESS OF THE FORMER SPOUSE IS NOT KNOWN?

If the petitioner does not know where the Respondent currently lives, he or she must show that reasonable attempts were made to locate the person. The Judge will use personal discretion to determine if those efforts are adequate in each case. Sometimes the current mailing address of a close relative of the Respondent will suffice. These sincere efforts are very important because **a deliberate attempt to conceal the whereabouts of the Respondent can void the declaration of nullity decree.**

11. IS THE TESTIMONY KEPT CONFIDENTIAL?

The Respondent has the **right** to receive that information on which the alleged grounds for nullity are based. However, the Judge has the authority to withhold certain testimony providing the rights of the Respondent are not

19. WHEN CAN THE DATE FOR THE MARRIAGE BE SET?

No one in the parish may guarantee a date for a subsequent wedding until **after** the Court of Appeal has made its decision, and **after** any other additional requirements have been met. Parties are therefore strongly encouraged not even to set a wedding date until it is clear that no obstacles stand in the way of a celebration of marriage in the Catholic Church. Please consult our policy statement "Setting a Wedding Date", which is included with the information packet for the formal process (see #6 above).

20. HOW LONG DOES THE PROCESS FOR A FORMAL DECLARATION OF NULLITY TAKE?

Each case is treated on an individual basis. Because of the large number of cases, and the fact that some Witnesses provide their testimony more quickly than others, it is truly impossible to say how long it will take to complete a case. However, the Tribunal strives to bring a case to its conclusion within a year of its formal acceptance (see #8 above).

Of course, the Tribunal can never legitimately guarantee that a decision will be affirmative, and a Court of Appeal can reverse an affirmative decision. **Moreover, a tribunal staff member may never promise to complete a case by a certain date** (see #19 above).

21. ARE THERE OTHER KINDS OF MARRIAGE CASES?

Besides the procedure followed above, there are two categories of previous marriages which the Tribunal examines. They are called "Documentary Cases" and "Privilege Cases." Each of them requires a different procedure.

When the Tribunal receives an initial application, and it determines that another type of case is indicated, a staff member will contact the Petitioner or the Field Advocate by letter or telephone. Either an interview or further information will be requested in order to process the case.

22. WHAT ARE "DOCUMENTARY CASES"?

Documentary cases are indicated when there is some extrinsic reason in law to suspect that the marriage is invalid. In many instances a documentary case can be completed by obtaining the necessary documents along with shorter testimony to prove the existence of a legal

must give a negative decision. The invalidity of a marriage must be demonstrated by facts and is not based simply on the opinion of one or both parties.

In the case of a negative decision, a person has the right to make an appeal. This is done by contacting the Judge in Kalamazoo who issued the decision, and making known in writing the intention to appeal the case. Then the Judge or an Advocate will inform the person of the proper procedures to follow.

The case is heard ordinarily by the Court of Appeal in Detroit. If that Court **overturns** the first negative decision by granting an affirmative decision, the case proceeds to the Court of Third Instance, ordinarily the Roman Rota. In this event, the Roman Rota serves as the ordinary Court of Appeal for Detroit because there was a split decision by the first two Courts that heard the case; and, a formal marriage nullity always requires two affirmative decisions in order to become effective.

If the Court of Appeal in Detroit upholds the negative decision for the reasons submitted, the case is ordinarily closed. However, it may be reopened if new and convincing evidence is presented, or if there is a new reason to question the validity of the marriage.

18. ARE THERE ANY OTHER REQUIREMENTS BEFORE THE PERSON CAN MARRY?

Sometimes a Judge may make a **recommendation** for counseling for one or both of the parties. The pastoral personnel take this into consideration when preparing the couple for the celebration of marriage, both for the well-being of the parties and the success of the subsequent marriage.

A temporary **prohibition** is imposed in a case where there is serious doubt that a person is presently capable of entering a binding marriage, or has the proper attitudes concerning the essential obligations of marriage. A prohibition is also imposed when the obligations of a prior union are not being fulfilled, e.g. child support has not been paid. This restriction requires consultation, between the minister in the parish who is preparing the couple for marriage and a representative of the Bishop, before another marriage may be celebrated in the Church. This is one reason a marriage date should not be previously set by a person who has initiated this process (see #19 below).

compromised (e.g., confidential psychological reports).

Witnesses may request that their testimony be withheld in whole or in part from the Petitioner and/or the Respondent for serious reasons. Such a request may have certain procedural effects.

Only with Tribunal permission may either party to the case have access to any testimony offered by Witnesses who have no objections to such access. Moreover, **Witnesses are never to share their testimony with either party to a case** while the inquiry is still pending. This is to prevent any appearance of collusion with the parties. Therefore, the Petitioner (or Respondent) is not to initiate any proposal for access to the testimony of Witnesses without first consulting with the Presiding Judge.

12. WHO ELSE MAY BE INVOLVED IN A CASE?

After a case has been formally accepted (see #8 above), a letter, indicating the reasons for accepting the case, is sent to each of the parties. It lists the names of the Tribunal officials who will be involved in the case. This notification includes the name of the Judge (who will make the final decision) and of the Defender of the Bond (who speaks in defense of a valid marriage and makes sure church law has been observed throughout the process). At this time the parties have the opportunity to accept, object to, or make comments on certain procedural matters.

The Witnesses, whose names have been submitted by the parties, are invited to answer a brief questionnaire. In most cases, the corroborative testimony of at least two knowledgeable Witnesses is necessary. The parties may express a desire to give additional testimony in writing or in person. The Judge may request the Petitioner and/or Respondent to come for an interview at the local Tribunal office of each party, but each at a different time. Depending on the nature of the case, there may also be a request for one or both parties to undergo a psychological evaluation, if this could be helpful for the Judge to understand better their personality, character, and temperament.

13. WHO IS QUALIFIED TO BE A WITNESS?

Most people, including family members are eligible to offer testimony. Some people, as priest confessors, are **excluded** by law. Others are considered **unsuitable**,

including young children, the insane, a current or prospective spouse, and those who have learned about the circumstances of the marriage only after the tribunal process has begun. Generally, the Tribunal does not request adolescent or adult children of the parties to testify unless there is a special reason.

The Witnesses receive a questionnaire in the mail, and they are rarely required to appear at the Tribunal office. Witnesses are not simply character references. Ordinarily, a Witness must be aware of some significant aspects of the marriage in question. The Witnesses do **not** need first hand knowledge of any marital problems, but they must have learned of them from a reliable person, including the Petitioner or Respondent, **before** the Tribunal inquiry was begun.

It is very important that the party makes sure that the Witnesses have agreed to cooperate with the Tribunal and understand their role **before** submitting their names. They should also be encouraged by the **Petitioner (or Respondent)** to return their testimony **directly** to the Tribunal within a reasonable time, i.e., two weeks. It is the responsibility of the **Petitioner (or Respondent)** to check with the Witnesses within five weeks after a case has been **formally** accepted (cf. n. 8) to determine whether they have returned their testimony to the Tribunal. One of the main reasons for delay in the processing of a case is that **Witnesses do not respond in due time.**

14. WHAT OTHER INFORMATION MIGHT THE JUDGE COLLECT?

If it is helpful in a particular case, the Judge may collect statements or information from sources such as medical or psychological personnel, institutions, or law enforcement agencies. In order to obtain this information legitimately, the Petitioner and/or Respondent will be asked to sign the proper release forms.

The Judge may consult with other experts in their fields in order to reach a well-informed decision. They might include a psychologist, a legal expert, or someone who is knowledgeable about a particular aspect important to the case.

The Judge will always inform both parties that they have two weeks to submit any other pertinent evidence.

Afterwards, the entire case is presented to the Defender

of the Bond. It is the Defender's role to speak in defense of the validity of the marriage; to ensure that church law has been observed throughout the process; and to make observations about any special aspects of the case which should be addressed when the Judge makes the final decision.

15. HOW IS THE FINAL DECISION MADE?

After the parties, the Witnesses, Court Expert, and Defender of the Bond have submitted their statements, the entire body of evidence is given to the Judge for a decision. In most cases, a single Judge makes the decision in the Court of First Instance at Kalamazoo. At times, three Judges may decide a case.

16. WHAT IS THE APPEAL PROCESS?

Every formal case which receives an affirmative decision (i.e. a declaration of nullity), in order to become effective, must go before a Court of Appeal, called the Court of Second Instance. If either party is aggrieved by the first decision, he or she may make a personal appeal in writing to the Court of Second Instance. The ordinary Appeal Court which serves the Diocese of Kalamazoo is in Detroit. The Appeal Court, which always consists of at least three judges, reviews the decision made by the Tribunal in Kalamazoo. It may simply confirm the decision. Or it may initiate a more thorough investigation of the case if one of the parties has new evidence to present, or if the decision is not supported by the evidence.

Normally, the decision of the Tribunal for a marriage case is effective after **two affirmative decisions.** After a decision is given by the Appeal Court, the Judge of the Court of First Instance will notify the parties of that decision and their subsequent rights based on that decision.

Either party has the right to bypass the Ordinary Court of Second Instance in Detroit and to request the Roman Rota to review the case. There is a minimum \$850 fee required for all cases appealed to Rome.

17. DOES A TRIBUNAL EVER GIVE A NEGATIVE DECISION IN A CASE?

YES. The Catholic Church always presumes that a properly celebrated marriage is valid. In order that there be a formal declaration of nullity a person must present sufficient evidence to overturn this presumption. If there is no proof beyond a reasonable doubt, then the Tribunal