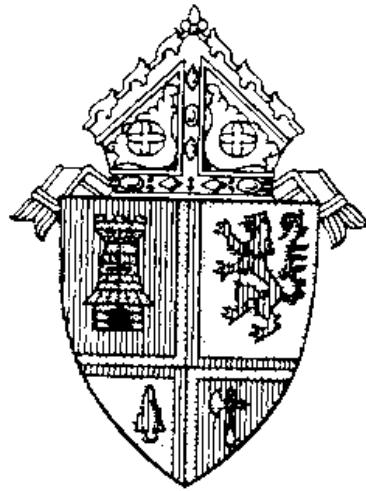


# DIOCESE OF ST. PETERSBURG



## MARRIAGE TRIBUNAL PROCEDURES

## TABLE OF CONTENTS

<u>SECTION ONE:</u>	<u>Dispensations and/or permissions</u>	1
<u>SECTION TWO:</u>	<u>Ministry to the Divorced and Remarried</u>	4
	General Norms	5
	Lack of Canonical Form	7
	Previous Bond (Ligamen)	10
	Pauline Privilege	11
	Formal Trial	13
	Sanatio in Radice	18

# SECTION ONE

# DISPENSATIONS AND/OR PERMISSIONS FOR MARRIAGE

**DISPENSATIONS** are for Validity!

1. The following Impediments, which render a person incapable of contracting marriage validly (Canon 1073), can be dispensed by one of the Bishop's delegates in the Tribunal:

## **DISPARITY OF CULT OR WORSHIP:**

The most common DISPENSATION is for Disparity of Cult (Canon 1086), which involves a marriage between a Catholic (who has not left the Church by a formal act) and an unbaptized person.

## **CONSANGUINITY:**

The second most common DISPENSATION, particularly among certain ethnic groups or cultures, is for Consanguinity (Canon 1091), which may be dispensed in the third and fourth degrees of the collateral line. Requests for this dispensation usually involve a marriage between uncles and nieces or between aunts and nephews (the third degree), or for first cousins (the fourth degree).

## **AFFINITY:**

The relationship which exists between one spouse and the blood relatives of the other spouse (in-laws) is known as affinity. The impediment of Affinity prohibits marriages between one spouse and all of the other spouse's relatives in the direct line but not in the collateral line. In other words, a person cannot validly marry his/her spouse's parent/grandparent or child/grandchild from a former union without a Dispensation. As the impediment does not bind in the collateral line a person may subsequently marry his/her spouse's brother or sister without seeking a Dispensation or Permission. NOTE: Affinity affects blood relatives and not relatives by adoption.

## **AGE:**

Among other DISPENSATIONS which are dispensable according to the Code, there is Age (Canon 1083). In order to contract marriage validly, a male must be at least sixteen years of age; a female must be at least fourteen years of age. [PLEASE NOTE: in the Diocese of St. Petersburg PERMISSION is needed up to nineteen (19) years of age for both the bride and the groom]

2. The impediments of **LIGAMEN** [Prior Valid Bond] (Canon 1085), **IMPOTENCE** (Canon 1084), and **CONSANGUINITY** in the direct line and in the second degree [brother/sister] of the collateral line (Canon 1091) are NOT DISPENSABLE because they arise from the Church's understanding of natural law.

3. The impediments of **HOLY ORDERS** (Canon 1087), **PERPETUAL VOW OF CHASTITY** (Canon 1088), and **CRIME** [contracted by a person, wishing to marry another, who brings about the death of that person's spouse or of his/her own spouse] (Canon 1090) are DISPENSATIONS RESERVED TO THE HOLY SEE.

### **THE DISPENSATION FROM CANONICAL FORM**

4. The Dispensation from **CANONICAL FORM** is usually requested only for the most serious reason, i.e., the spiritual harmony between the parties and their families. This Dispensation means that a non-Catholic minister will be the official witness of the marriage. It must be remembered that there must be only one exchange of vows. There is only one ceremony and, in this case, the non-Catholic minister is the official witness. Finally, when requesting a dispensation from canonical form, please remember that in accord with the particular law of the Diocese of St. Petersburg, it is understood that the marriage will take place in a Church or Temple or other sacred place.

### **PERMISSIONS** are for Liceity!

5. In accord with Canons 1066, 1071 and 1072 of the Code of Canon Law, in order for a priest or deacon to assist at a marriage in which the following situations exist **PERMISSION** must be obtained from the Diocesan Bishop, his Vicar General, or one of his Delegates in the Tribunal.
  - a) a marriage involving a person who has notoriously rejected the Catholic faith;
  - b) a marriage of a Catholic and a baptized non-Catholic;
  - c) a marriage of a person(s) under nineteen years of age;
  - d) a marriage involving a per-marital pregnancy;
  - e) a marriage of a person with natural obligations to a former spouse or children;
  - f) a Catholic wishing to marry a non-Catholic in a non-Catholic Church with a properly delegated Catholic priest or deacon officiating  
[NOTE: for Ecumenical reasons this permission is rarely granted]
  - g) a Catholic, who for peace and family harmony, wishes to marry a non-Catholic in an environment other than a Church, Synagogue or Mosque  
[NOTE: in order to protect the dignity of Matrimony this permission is rarely granted];
  - h) a couple who will have less than a six-month preparation.

## PROCEDURES TO OBTAIN A DISPENSATION AND/OR PERMISSION:

6. For a just and reasonable cause the Bishop of St. Petersburg, his Vicar General or his Delegates in the Tribunal can grant a dispensation and/or permission for marriage to any Catholic who has a domicile or a quasi-domicile (i.e., a three month residency) in the Diocese of St. Petersburg, even if the marriage is to be celebrated outside the Diocese. The Bishop, his Vicar General or his Delegates in the Tribunal can also grant a dispensation and/or permission to Catholic who lacks a domicile or quasi-domicile in the Diocese of St. Petersburg provided he/she is physically present in the Diocese at the time the dispensation and/or permission is granted.
7. The form **APPLICATION FOR MATRIMONIAL DISPENSATION OR PERMISSION** must be completed in its entirety and mailed to the Tribunal along with a recent copy of the Petitioner's Baptismal Certificate with all NOTATIONS.
8. The following documents need NOT be mailed to the Tribunal but must be readily available if requested:
  - a) A-Forms
  - b) B-Forms
  - c) Baptismal Certificate of the non-Catholic
  - d) Decrees of Nullity or Death Certificates (in cases involving prior unions)
  - e) Civil Marriage License (in Convalidation cases)
  - f) PMI and/or FOCUS
  - g) Proof of Pre-Cana or Pre-Cana II or Engaged Encounter or Evenings for the Engaged or some other form of marriage preparation, especially in cases involving youthful age, pre-marital pregnancy, or multiple previous marriages.
9. Other than cases involving a Dispensation from Disparity of Cult or a Dispensation from Canonical Form or Permission for a Catholic to marry a baptized non-Catholic, a letter of explanation (or a phone call) from the priest/deacon should accompany or precede the Petition to explain any unique circumstances or other pastoral considerations the Tribunal should weigh in determining whether there is just and reasonable cause to grant the dispensation and/or permission.

## SECTION TWO

## **MINISTRY TO THE DIVORCED AND REMARRIED**

Divorce is unique among life experiences. There is no precedent that can prepare an individual for its trauma. Divorce is a process, not an event. Legal divorce can be pinpointed to a moment in time, to the signing of a court decision; not so the experience of divorce. The experience is the result of a series of incidents which eventually erode the relationship between a husband and wife. The ending of any marriage that has endured long enough for the two partners to invest portions of their lives, money, emotions and dreams is a traumatic experience. The adjustment which follows can be either positive or negative; it is always difficult.

The Catholic Church is aware of the stress involved with divorce. The church addresses this issue through its ministry, bearing in mind the needs of divorced individuals while supporting the permanence of a valid sacramental union.

The Office of the Marriage Tribunal of the Diocese of St. Petersburg is designed to help the divorced and remarried person, the divorced person seeking another marriage, and the divorced Catholic seeking a clarification of his or her standing in the Church. Information, assistance and recommendations are available from the personnel of the Tribunal who are present to help you.

The following information is intended as a working guide for the parish minister who directly faces situations of divorce and remarriage. These norms have been written in the light of the 1983 Code of Canon Law, and contain the present practices of our Diocesan Tribunal. It is hoped that these norms will assist priests, deacons and other pastoral ministers in their service to the divorced and in the building up of the People of God.



## GENERAL NORMS

The following general norms apply to every sort of case for dissolution or annulment included in this handbook.

1. Canon 1072 of the Code of Canon Law states that a diriment impediment renders a person incapable of contracting marriage validly. For a complete list of the diriment impediments refer to canons 1083-1094 of the Code of Canon Law.
2. A person who is held to the bond of a prior marriage, even if it has not been consummated, invalidly attempts marriage. If the prior marriage is invalid or dissolved civilly for any reason whatsoever, it is not on that account permitted to contract another marriage before the nullity of the dissolution of the prior marriage(s) has been legitimately and certainly established by an ecclesiastical court of the Catholic Church. (cf canon 1085)
3. Catholics and non-Catholics, who have been married previously, whether in or outside of the Catholic Church, and who now wish to marry in the Catholic church, must petition the Tribunal through their local priest/deacon/religious/lay pastoral assistant, to determine the canonical status of **EACH** prior marriage before proceeding to celebrate a new union in the Catholic Church, unless the previous marriage in question was dissolved through the death of one of the parties.
4. Before a petitioner can present his/her case (whether Defect/Lack of Canonical Form, Ligamen or Formal Petition for Declaration of Nullity) to the Tribunal, he/she must have obtained a civil divorce. Furthermore one year must have elapsed from the date the civil divorce was granted. When two or more marriages have been contracted, it is the policy of the Tribunal not to accept these cases (Defect/Lack of Canonical Form, Ligamen or Formal Petition for Declaration of Nullity) until at least two years have elapsed from the date of the most recent divorce.
5. Petitioners should be informed by pastors and/or their associates that no date for a subsequent marriage in the Catholic church can be set until the canonical status of any and all previous marriages have been resolved satisfactorily in the external forum.
6. The person seeking a dissolution/annulment, known as the “petitioner”, makes the first move by contacting a priest, deacon, religious or pastoral minister in his/her local parish. The petitioner will be asked to complete a petition which, together with other required documents, is then forwarded to the Tribunal Office.

It must be stressed that the petition must be signed and dated by the Petitioner for validity. Petition forms for each kind of case are available at the Tribunal.

7. No action will begin at the Tribunal in processing a case until the Tribunal has received the completed petition as well as all the required documents. The

baptismal certificate, **showing all notations**, of a Catholic must be recently issued (i.e. within the last six months).

8. Before any persons are offered as witnesses, the petitioner must ascertain their willingness to cooperate with the Tribunal as well as their knowledge of the marriage in question.
9. The petitioner should be informed that the Tribunal is required by law to contact the respondent. Reasonable effort must be made to discover the respondent's whereabouts if they are initially unknown by the petitioner.
10. Once a decision has been rendered, the official document declaring the dissolution/annulment will be sent to the petitioner, the respondent (if Catholic) and the priest advocate. When the petitioner wishes to remarry this document must be presented to the priest or deacon who is to perform the ceremony.
11. The Acts of the case will remain at the Tribunal. The petitioner's marriage certificate, divorce decree and baptismal certificate will be returned upon the conclusion of the case.
12. Although there is a fixed fee asked for the processing of the various kinds of cases (a fee which varies according to the kind of case being considered), the petitioner must understand that **NO CASE WILL BE REFUSED OR IN ANY WAY PREJUDICED BECAUSE THE PETITIONER LACKS RESOURCES TO MAKE AN OFFERING TO THE TRIBUNAL.**
13. Should the petitioner be unable to afford the fee (which simply assists in paying the costs to the diocese for operating this office) it is suggested the parish assume all or part of this obligation.
14. A case should not be rejected as lacking canonical basis at the parish level. Only the Diocesan Tribunal has the ability by law to make such a judgment, and that judgment is subject to appeal to the Court of Second Instance which for the Diocese of St. Petersburg is the Metropolitan Tribunal of Miami.
15. Effective February 1, 2015, the fees for all Tribunal services were eliminated by direction of Bishop Robert N. Lynch.

## **DECLARATION OF NULLITY ON THE BASIS OF LACK OF CANONICAL FORM**

1. Canon 1108 of the Code of Canon Law states that only those marriages are valid which are contracted in the presence of the local ordinary or the pastor (or his associates) or any priest or deacon delegated by either of them to assist at the marriage in the presence of two witnesses. It further adds that the person assisting at the marriage is understood to be the only one, present at the ceremony, who asks for and receives the consent of the parties in the name of the church.
  - A. What we call “LACK OF PROPER CANONICAL FORM” usually refers to a marriage of at least one baptized Catholic which took place, without permission or dispensation, before either a non-Catholic minister or a civil official, that is, the form of Catholic marriage was simply not followed. That is why we say that such marriages “lack” form.
  - B. “DEFECT OF FORM” refers to the case when the Catholic form of marriage is attempted, but something is missing. Thus the form is “defective”. For example, if the priest or deacon does not have proper delegation, or there is only one witness or no witnesses. These cases must be handled differently by the Tribunal by a Documentary or Summary process.
2. Canon 1117 states that the above form of marriage is to be observed whenever at least one of the contractants was baptized into the Catholic Church or was received into it and has not left it by a formal act. Canon 1127 notes one exception. If a Catholic contracts marriage with a non-Catholic of an oriental rite, the canonical form of celebration is to be observed only for liceity. However, for validity the presence of a sacred minister is required along with the observance of the other requirements of law.
3. A baptized Catholic who was not raised Catholic and who contracted marriage outside the Catholic Church before January 1, 1949 was not bound to the Catholic form of marriage and is therefore not eligible to petition for Lack of Form. However, the phrase “who was not raised Catholic”, according to sound canonical Tradition, should be interpreted so as to allow as many as possible to avail themselves of the Lack of Form process.
4. A baptized Catholic who has left the Catholic Church by a formal act and who contracted marriage after November 27, 1983 is likewise not bound to the Catholic form of marriage and therefore needs to apply for a formal annulment. Those who become formal members of another Christian or non-Christian denomination or make a formal profession of atheism are considered to have left

by a formal act. The term "formal act" should be interpreted so as to allow as many as possible to avail themselves of the Lack of Form process.

5. A marriage is invalid due to Lack/Defect of Canonical form:
  - a) if a Catholic attempts marriage before a non-Catholic minister without having obtained, from the local ordinary or his delegate, a dispensation from the canonical form of marriage;
  - b) if a pastor or his associates or any priest/deacon assists at a marriage outside his jurisdiction without obtaining delegation from the local pastor or his associate in whose territory the marriage is celebrated;
  - c) if a pastor or his associate, even within his own territory, assists at a marriage of an Eastern Rite Catholic and a non-Catholic, or a marriage between two Eastern Rite Catholics, without delegation from the competent Eastern Rite Authority;
  - d) if a pastor or his associate or a properly delegated priest/deacon assists at a marriage and asks for consent from only one party while allowing another priest/deacon or non-Catholic minister to ask consent from the other party;
  - e) if the pastor or his associate or any properly delegated priest/deacon allows the couple to give their consent without asking for and receiving it.
  - f) if two witnesses, who must be able to testify to what is taking place, are not present physically and indeed simultaneously with the minister;
6. When a Roman Catholic marries a member of an Eastern Rite Catholic Church or a member of the Orthodox Church, the Canonical Form of the Roman Rite obliges only for liceity, not for validity. In these cases, for the validity of the marriage, the presence of a sacred minister suffices as long as the other requirements are observed. This norm became effective as of March 25, 1967 (see also Canon 1127.1). Prior to March 25, 1967 any such marriages contracted by a Roman Catholic would be **invalid** for Lack of Proper Canonical Form (cfr. Crescens Matrimonium, AAS 59, 1967, pps. 165ff).
7. According to the new eastern Code of Canon Law, a person of the Eastern Rite, who wishes to marry a person of the Roman Rite, can be validly and licitly married in either Rite without a dispensation or permission. However the new eastern Code makes a recommendation if the Eastern Rite person is male that they marry in the Eastern Rite but it is only a recommendation.
8. To obtain a declaration of nullity due to Lack of Canonical Form, the petitioner, through his/her local priest/deacon/lay pastoral assistant must:
  - a) complete the form PETITION FOR A DECLARATION OF NULLITY ON THE BASIS OF LACK OF CANONICAL FORM in its entirety including

signature and date;

- b) obtain a recently dated baptismal certificate with any notations recorded;
  - c) give completed form and baptismal certificate to the Tribunal
  - d) present marriage and divorce records to the parish priest/deacon/lay pastoral assistant to be kept on file; they need not be forwarded to the Tribunal.
9. The priest/deacon/lay pastoral assistant should complete and sign the pertinent portion of the affidavit and mail it to the Tribunal along with the recently dated baptismal certificate.

## **DECLARATION OF NULLITY ON THE BASIS OF PREVIOUS BOND (LIGAMEN)**

1. Ligamen is a previously existing valid marriage bond which prohibits both parties to the marriage from entering into a second union. Ligamen is a diriment impediment and therefore renders all subsequent marriages invalid. Normally a ligament case involves these three persons:
  - a) the petitioner
  - b) the respondent
  - c) the former spouse (usually of the respondent) who must be living at the time the second marriage is attempted.
  
2. a marriage which is invalid due to the impediment of Ligamen is declared null by the so-called "documentary process". To obtain a declaration of nullity due to Ligamen the petitioner must:
  - a) fill out the form PETITION FOR DECLARATION OF NULLITY OF MARRIAGE BECAUSE OF PREVIOUS BOND (LIGAMEN) in its entirety including signature and date;
  - b) obtain a copy of the application for the marriage license of the petitioner and respondent and also a copy of the marriage certificate;
  - c) obtain a copy of the divorce decree of the petitioner and the respondent;
  - d) obtain a copy of the application for the marriage license of the respondent his his/her former spouse, also a copy of the marriage certificate for same (if possible) and lastly, be morally certain that neither of these parties was baptized Catholic;
  - e) present the completed form and the above mentioned documents to the priest/deacon/lay pastoral associate.
  
3. The priest/deacon/lay pastoral assistant should complete and sign the form and mail with all the documents and taxa to the Tribunal.
  
4. After these preliminary documents are received by the Tribunal, the respondent will be contacted by mail if advisable and/or possible. The respondent will be given two weeks to reply to the court by completing a simple questionnaire about the prior marriage. If the respondent refuses to cooperate with the Tribunal, witnesses will be contacted to supply the information which would otherwise have been obtained from the respondent.

The Acts of the case are then forwarded to the Defender of the Bond for his remarks. The case is then studied by a single Judge who issues a judgement.

## **DISSOLUTION OF A MARRIAGE BY REASON OF THE PAULINE PRIVILEGE**

1. Canon 1143 of the Code of Canon Law states that a marriage of two unbaptized persons can be dissolved by the Pauline Privilege in favor of the faith of the party who received baptism by the very fact that a new marriage is contracted by that party, provided the unbaptized party departs. The unbaptized party is considered to have departed if he/she does not wish to cohabit with baptized party or to cohabit peacefully without insult to the Creator, unless the baptized party after baptism has given just cause for the unbaptized party's departing.
  
2. The Pauline Privilege applies to marriages which have the following characteristics:
  - a) both parties were unbaptized at the time of the marriage;
  - b) after the marriage, conjugal life stopped and the parties separated and divorced;
  - c) now one of the parties has received baptism or intends to receive it;
  - d) the former spouse who remains unbaptized is unwilling to live peaceably with the convert;
  - e) if both parties receive baptism, the marriage could be handled as a non-consummation case provided there was no sexual intercourse after the baptism of both, since that would make the marriage ratum et consummatum.
  
3. To obtain a dissolution of a marriage by means of the Pauline Privilege the petitioner must:
  - a) complete the form PETITION FOR PAULINE PRIVILEGE in its entirety including signature and date;
  - b) obtain a copy of the marriage certificate for the marriage which is to be dissolved;
  - c) obtain a copy of the divorce decree for the marriage which is to be dissolved;
  - d) obtain a recent copy of the petitioner's baptismal certificate (if already baptized);
  - e) obtain a recent copy of the baptismal certificate of the petitioner's intended spouse (if that person is baptized);
  - f) obtain a letter of recommendation from his/her local pastor or his associate, stating whether any scandal may result if the dissolution is permitted;
  - e) present all of the above to the priest/deacon/lay pastoral associate.

4. The priest/deacon/lay pastoral assistant should complete and sign his/her portion of the form and mail with the documents and taxa to the Tribunal.
5. When these documents have been received at the Tribunal, questionnaires concerning the baptismal status of the parties to the first marriage will be issued to the parties themselves and to at least two knowledgeable and cooperative witnesses for each (i.e. normally to their parents or other older relatives).
6. In addition to proving that both parties were unbaptized for the duration of their conjugal life together, it is essential to prove:
  - a) that the not baptized party has departed which is usually indicated by the civil divorce of the parties who were married as unbaptized persons;  
or
  - b) that the non-baptized party does not wish to cohabit in peace with the baptized person without insult to the Creator, (i.e. the non-baptized party makes it difficult for the baptized party to fulfill the obligations of the Christian life or to live peacefully); and
  - c) the baptized party did not give just cause for the departure of the non-baptized party. A just cause for the departure of the non-baptized spouse would be adultery or some other offense, provided it is not condoned by the unbaptized spouse. Adultery on the part of the convert would not be the cause of the departure if the unbaptized spouse had also been guilty of adultery, or had condoned it, or was unaware of it so that it had no influence on the breakdown of the marriage. If there is a doubt about the cause of departure, the judgment is to be given in favor of the faith according to the presumption of canon 1150.
7. Since the Pauline Privilege is actually implemented when the second marriage dissolves the first one, the priest or deacon assisting at the marriage should send to the Tribunal a copy of the marriage certificate for the second marriage. This serves as proof that the dissolution of the first marriage took place.



## **DECLARATION OF NULLITY FOLLOWING A FORMAL TRIAL**

The Church understands that every marriage is a heterosexual partnership of the whole of life which is naturally directed to the good of the spouses and the procreation and education of children. The essential marks of this partnership are unity (exclusivity) and indissolubility (permanence). Such is a description of every marriage. If a marriage is celebrated between two baptized persons, it is also a sacrament which after consummation performed in a human way, can be dissolved only by the death of one of the partners.

If a petitioner is not able to avail himself/herself of either the Lack of Form, Ligamen, or Pauline Privilege solution to a previous bond of marriage, he/she must submit the case to a formal trial.

A “formal annulment” is an authentic declaration by the Church that a particular marriage was never, from the beginning, a true Christian marriage as understood in the tradition of the Church.

Several factors can prevent a marriage from being valid from its start. One or both of the parties may have lacked the discretionary judgment (due discretion) to enter into marriage. One or both may have lacked the psychological ability (due competence) to assume the essential rights and responsibilities of married life. One or both may have excluded from their consent some essential element of marriage (i.e. the right to children, permanence or fidelity). One or both may have been forced into the marriage or deceived into it. These and other factors are canonically recognized grounds for marital nullity, if they were present at the time of consent.

1. To obtain a declaration of nullity using the formal trial process, the petitioner must:
  - a) fill out the form PETITION FOR DECLARATION OF NULLITY OF MARRIAGE in its entirety including signature and date;
  - b) answer all questions in the petitioner’s questionnaire (history) as completely as possible;
  - c) obtain a copy of the marriage certificate of the petitioner and respondent;
  - d) obtain a copy of the divorce decree of the petitioner and respondent;
  - e) obtain a recent copy of his/her baptismal certificate (if Catholic, showing all notations);
  - f) present all of the above to the priest/deacon/lay pastoral assistant;
  - g) the priest/deacon/lay pastoral assistant should sign and complete his/her part and mail to the Tribunal with the documents.

2. Every person has a natural right to present his/her petition for a formal declaration of nullity to the Tribunal. All priests, deacons and other pastoral ministers are bound in justice to do everything possible to assist the petitioner in presenting the case to the Tribunal. Only the Tribunal is empowered to state that no basis for a trial exists.
3. In order for the Tribunal of the Diocese of St. Petersburg to accept legally (i.e. canonically) a declaration of nullity it is required that either:
  - a) the marriage in question was celebrated in this diocese, or
  - b) the former spouse of the Petitioner be presently a resident of this diocese.

Otherwise this Tribunal must first contact the Tribunal of the respondent to obtain clearance to try the case in the Diocese of St. Petersburg. In such instances, the respondent will be contacted before this clearance is given.

4. The “petition” is the document whereby the interested party (petitioner) asks the Tribunal to accept the case. The tribunal must know the baptismal and marital history of both parties. It is crucial to know the final date of cohabitation, which refers to the last time the couple lived together as husband and wife. In addition to the testimony of knowledgeable and cooperative witnesses, other proofs can be presented to the Tribunal including such things as pertinent records, letters, legal documents, etc. There is no valid petition without the signature of the petitioner and the date.
5. The petitioner’s questionnaire is a comprehensive account of the life of the petitioner, the respondent and their marriage. The petitioner should complete this questionnaire in a leisurely fashion and make it concise, accurate and relevant. All questions in the questionnaire are important and none should be omitted. Care should be taken to be specific about all dates of engagements, separations, etc. The petitioner must strike a balance between brevity and useless length. The replies should always be typed on and 8½” x 11” paper. The answers to the questionnaire should be carefully reviewed by the priest, deacon or other pastoral assistant so that necessary revisions and clarifications can be made before the survey is presented to the Tribunal. This questionnaire is the petitioner’s major opportunity to present his/her case to the Tribunal. The outcome of the trial may well depend on the thoroughness of this account.
6. When the required documents are received at the Tribunal, the case is given a preliminary study. If it appears the case has merit, it will be accepted for processing. If no such merit is evident, the petitioner will be so informed and given the opportunity to have the case reviewed a second time by the Court of Second Instance for the Province of Miami.
7. Both the petitioner and the respondent may exercise their right to appoint a procurator-advocate to plead the case. A procurator is a proxy who takes the legal place of the party. An advocate is a Church lawyer or a priest, deacon or

other pastoral assistant specifically trained for this task who pleads the case on the party's behalf. The procurator-advocate may be one person.

8. After the case is accepted, the respondent is cited. If his/her whereabouts are unknown, every reasonable effort must be made to locate him/her. If in the end the respondent still cannot be located, the case will proceed to trial nonetheless.
9. After the respondent has been contacted (if such were possible), the grounds upon which the case will be studied are determined. Proofs are then collected, which consist normally of the depositions of the witnesses presented by the parties, medical records, legal documents, etc. The acts of the case may be reviewed at some stage by a court-appointed psychological expert if such is deemed appropriate.
10. After the proofs have been collected, the case is reviewed by the Defender of the Bond whose task is to present arguments favoring the validity of the marriage (if such arguments exist). The case may also be reviewed at the same time by the procurator-advocate who will seek, normally, to illustrate points revealing the invalidity of the union (if such points exist).
11. The remarks of the Defender of the Bond and of the procurator-advocate are then forwarded, together with the acts of the case to a single judge or a panel of three judges for resolution. An "affirmative decision" means the union has been proven null from the beginning. A "negative decision" means the Tribunal finds the marriage to remain valid and binding.
12. The first decision is communicated to the interested parties who have the right to make appeal to the Court of Second Instance within 15 working days (i.e. about 3 weeks). A desire to make an appeal is made known to the Tribunal of the Diocese of St. Petersburg. If no such appeal is sought the case is automatically forwarded to the Metropolitan Tribunal of Miami for review.
13. The Metropolitan Tribunal of Miami, after reviewing the case, will either confirm the decision of the Diocese of St. Petersburg or open up the case to a new trial at the Metropolitan Tribunal itself.
14. If the Metropolitan Tribunal of Miami reverses the decision of the St. Petersburg Tribunal, the case must then be forwarded to the Roman Rota for resolution. If the Metropolitan Tribunal of Miami confirms the decision of the St. Petersburg Tribunal, the parties will be notified immediately of the two concordant decisions. If the concordant decisions were in the affirmative the parties will be informed of their subsequent right to celebrate a new marriage in the church provided no "vetitum" (prohibition) or "monitum" (warning) was placed upon the parties.
15. The following is a brief description of some of the canonical grounds upon which the validity of a marriage may be contested in a formal trial. In no manner does

the list intend to be exhaustive. It is simply offered to explain in an elementary way some of the more common causes for marriage nullity.

TOTAL SIMULATION is the act of externally feigning consent during a wedding ceremony while internally excluding marriage or the right to the community of life. Total simulation would occur when one goes through a wedding as a means to an end other than marriage, or when one substitute true marriage with something different than marriage.

INTENTION AGAINST CHILDREN occurs when at least one party excludes (explicitly or implicitly) the right to the conjugal act (i.e. the right to those acts which are naturally able to produce children). “Intention against children” is another way of saying “intention against exchanging the right to the conjugal act.” The exclusion of children may be temporary or permanent. Either exclusion renders marriage invalid.

INTENTION AGAINST FIDELITY occurs when at least one party excluded (explicitly or implicitly) the exclusive right of husband and wife to the conjugal act.

INTENTION AGAINST PERMANENCE occurs when at least one party intends (explicitly or implicitly) to reserve the right to divorce and remarry someone else.

REVERENTIAL FEAR is present when one party enters the marriage to satisfy the wishes of one to whom reverence is due. Such reverential fear is light of itself but can become grave. For example, parental disapproval of a premarital pregnancy accompanied by scoldings, threats of being disowned, etc., may be sufficiently grave to force a teenager to marry when he/she does not wish to marry.

CONDITIONED CONSENT – Marriage come about through a free and unconditional consent. Marriage based on a condition concerning the future (e.g. “I’ll marry you provided you remain a practicing Catholic”) cannot be contracted validly. The condition may be expressed explicitly or implicitly.

FRAUD – A person who, on entering marriage, is deceived by fraud, perpetrated to obtain consent, about some quality of the other party which by its very nature can seriously disturb the partnership of conjugal life, contracts invalidly. An example would be the case of a woman who is deceived about her intended spouse’s vasectomy.

LACK OF DUE DISCRETION – One who suffers from a grave lack of discretion of judgement concerning essential matrimonial rights and responsibilities is incapable of entering marriage. Persons who attempt marriage hurriedly or at an early age are often discovered to have suffered this grave lack of due discretion. In addition, persons who show an inability to evaluate their own strengths and weaknesses, or to plan ahead for the future, may not have the ability to exercise

proper judgement about a lifetime relationship with another person. Chemical addiction (drugs or alcohol) is sometimes a factor which may make due discretion impossible. A great number of annulments are granted on lack of due discretion.

LACK OF DUE COMPETENCE refers to an inability (present at the time of marriage but sometimes only surfacing afterwards) to assume and fulfill the rights and duties of marriage. Such a lack may be present in cases of serious personality disorder, neuroses, etc.

## THE SANATIO IN RADICE

1. The radical sanation of an invalid marriage is its convalidation without the renewal of consent, granted by the diocesan bishop or his delegate, with retroactivity into the past as regards its canonical effects. The convalidation occurs at the moment the favor is granted. It is understood to be retroactive to the moment the marriage was celebrated, unless something else is clearly stated.
2. A marriage cannot be radically sanated if consent is lacking in one or both of the parties. If the consent was lacking at the beginning but was afterwards supplied, a sanation can be granted from the moment the consent was given.
3. A radical sanation can be granted validly even if one or both of the parties are unaware of it.
4. A marriage which is invalid due to an impediment or lack of canonical form can be sanated only after the impediment has ceased to exist and if the consent of the parties continues.
5. A radical sanation is not to be granted unless it is probable that the parties intend to persevere in conjugal life together.
6. A radical sanation is commonly granted when one party in an invalid marriage refuses to admit the invalidity of the union and to go through a Catholic ceremony which will validate the union. Sometimes the radical sanation is granted without the knowledge of either party, as happens when a marriage is invalid because the assisting priest or deacon lacked the required jurisdiction.
7. The Parish file must contain:
  - a) the prenuptial investigation form (A-form), completed as thoroughly as possible
  - b) a copy of the marriage license;
  - c) the baptismal certificate(s) of the Catholic party(ies);
  - d) other appropriate documentation (e.g. declarations of nullity, death certificates, etc.)
8. The diocesan bishop or his delegate is able to grant the radical sanation to a marriage when he has received:
  - a) petition for a radical sanation;
  - b) the usual dispensation/permission form (if applicable);

When the Tribunal has received all of the above, the diocesan bishop or his delegate will grant the sanation and inform the cleric of that favor.

# **APPENDIX**

## BIBLIOGRAPHY

- SCDF Letter, April 11, 1973, Canon Law Digest Vol. 8, p. 362.
- SCDF Letter, March 21, 1975, Canon Law Digest Vol. 9, p. 504-505.
- Coleman, Gerald D., "The Internal Forum Solution", The Priest 39 (1983), 33-36
- Farley, Leo and Reich, Warren, "Toward an Immediate Internal Forum Solution for Deserving Couples in Canonically Insoluble Marriage Cases", The Jurist 30 (1970), 45-74.
- Haring, Bernard, "Internal Forum Solutions to Insoluble Marriage Cases", The Jurist 30 (1970), 21-30.
- Huizing, Peter, "Law, Conscience and Marriage", The Jurist 30 (1970), 15-20.
- Orsy, Ladislaus, "Intolerable Marriage Situations: Conflict Between External and Internal Forum", The Jurist 30 (1970), 1-14.
- Provost, James H., "Intolerable Marriage Situations Revisited", The Jurist 40 (1980), 141-196.
- Provost, James H., "Intolerable Marriage Situations Revisited", The Jurist 40 (1980), 573-612.
- Reidy, Maurice, "The Sacraments and the Internal Forum", Clergy Review 61 (1976) 304-308.
- Urrutia, Francisco J., "The Internal Forum Solution, Some Comments", The Jurist 40 (1980), 128-140.