

THE PROCESS FOR INSTRUCTING A DISSOLUTION IN FAVOR OF THE FAITH



DIOCESE OF MADISON-TRIBUNAL · 702 S. High Point Road, Suite 225 · Madison, WI 53719-4926 · 608-821-3060 · tribunal@madisondiocese.org

A consummated marriage of two baptized persons, that is, a sacramental marriage, is indissoluble, and only death alone can dissolve that bond. However, a non-sacramental marriage, that is a marriage in which at least one party is not baptized, can be dissolved by the Roman Pontiff in favor of the faith and for the good of souls. One who desires that such a marriage be dissolved can request this favor from the Holy Father through his/her diocesan bishop and usually with the assistance of a canon lawyer appointed by the bishop. The procedure for requesting such a dissolution in favor of the faith is aimed at providing the competent ecclesiastical authority with a comprehensive picture of the specific and individual circumstances of the Petitioner and the prospective marriage. This favor is only granted if there is no possibility of restoring conjugal life, if neither the Petitioner nor the intended spouse was not the exclusive or prevailing culpable cause of the breakup of conjugal life, and if there is no scandal in dissolving the marriage.

Completion of the Petition for a Dissolution in Favor of the Faith Form

To initiate the process, the petition of one of the spouses to have the marriage dissolved is necessary. The petition, addressed to the Holy Father, must include the basic facts concerning the Petitioner and the Other Party in the marriage that is the object of the petition for dissolution, especially the baptismal status of the parties, the reasons for requesting the favor, and the status of the Intended Spouse in the subsequent marriage.

Determination Whether the Case Fulfills the Requirements for Dissolution

The dissolution in favor of the faith will only be granted if several conditions are met: 1) at least one of the spouses was unbaptized at the time of marriage; 2) if both spouses have been baptized after the time of consent, that consummation of the marriage has not occurred; 3) there is no possibility of restoring conjugal life; 4) neither the Petitioner nor the Intended Spouse was the prevailing cause of the breakup of conjugal life; 5) no scandal would arise from the dissolution of the marriage; and 6) if the Catholic party intends to marry a non-Catholic, the Catholic party declares that he/she is ready to remove any danger of departure from the faith and the non-Catholic party promises to allow the Catholic party to profess his/her faith and to baptize and raise the children as Catholics

Commission of Officers (Instructor, Defender, Notary)

The competent bishop can carry out the instruction of the process personally or he can entrust it to an instructor, who could be a tribunal judge or another person approved by the bishop. This commission may be given on a permanent or case by case basis. The commission of an Instructor, a Defender of the Bond, and a Notary must be done in writing and signed by the diocesan bishop before any testimony is received. Previously only a cleric could be the Instructor, but now a lay person may be appointed as Instructor. The officers are to take an oath as well, if they have not yet already done so in their function in the tribunal.

Instruction: Deposition of Petitioner, the Other Party, the Intended Spouse, and Witnesses

The examination of the parties and the witnesses is to be done by the Instructor with the assistance of the notary, after having cited the Defender of the Bond. The Instructor is to administer the oath to tell the truth; if someone refuses to take the oath, the person can be heard without it. Answers must be signed by the party or witness, the Instructor, and the notary.

The Petitioner is asked about the cause of the breakup of the marriage to be dissolved, whether there is any hope of restoring conjugal life, whether natural obligations are being fulfilled, the prospective marriage, the intended spouse, the possibility of scandal, and the willingness to practice the faith and raise the children Catholic. The Other Party is to be asked about his/her non-baptism, religious affiliation, and the possibility of restoring conjugal life. The Intended Spouse is to be asked about his/her baptismal status, religious affiliation, the breakup of the marriage, cohabitation, the possibility of scandal, and willingness to allow the Petitioner to practice the faith and raise the children Catholic. Additionally, there are to be witnesses to the non-baptism of one of the parties, character witnesses, and witnesses to the breakdown of the marriage.

Instruction: Search of Baptismal Records in Nearby Churches

Proof of non-baptism is an essential part of the instruction process, as the absence of baptism of one or the other spouse must be demonstrated with moral certitude. In addition to the testimony of credible and qualified witnesses, the investigation is to include a search of the baptismal registers in the places where the party who is said to be unbaptized lived as an infant. In particular, baptismal registers in the churches that the individual likely attended and in which the marriage was celebrated are to be considered.

The Report of the Instructor

The report of the instructor should make reference to the quality of the testimony obtained, to the reasons why certain witnesses cited by the Petitioner may not have given formal testimony, or why the required searches of baptismal records may have been omitted. In short, it is to be the first hand commentary on the development of the process. It is also a valuable means of anticipating requests that the Congregation would be expected to make for additional testimony or some other completion of the acts.

The Observations of the Defender of the Bond

The Defender of the Bond is entrusted with presenting his observations on whether there are any reasons that might stand in the way of the dissolution of the bond. This will include observations on the instruction, whether the non-baptism of one of the parties has been proven, the cause of the separation of the parties, the possibility of restoring conjugal life, the possibility of scandal, religiosity of the parties, and if the Catholic party intends to marry a non-Catholic, whether the Catholic party is ready to remove any danger of departure from the faith and whether the non-Catholic party will allow the Catholic party to profess his/her faith and to baptize and raise the children as Catholics.

The *Votum* of the Bishop

This document, given on his pastoral authority, is to set forth his opinion of the case and the reasons that recommend it. Precise reference is to be made whether the conditions for granting this favor have been met, along with any positive doubt that may have arisen about the validity of the marriage (cf. art. 10; 24). The bishop should always give clear indications about the present conditions of the parties and whether the Petitioner has attempted a new marriage in any form or may be cohabiting with the intended spouse (art. 1; 4-5; 24). Fear of scandal arising from the concession of the favor, or any doubt about the sincerity of conversion of the Petitioner or intended spouse, or any particular difficulties regarding the manner in which the Petitioner is fulfilling obligations arising from the former marriage should be settled before the case is submitted (cf. art. 7 §3; 9; 20).

Three Copies of Acts Sent to Congregation for the Doctrine of the Faith

The dissolution of a marriage in favor of the faith is granted personally by the Roman Pontiff, but these cases are first examined by the Congregation for the Doctrine of the Faith prior to their submission to the Holy Father. The acts sent to the Congregation must contain all the documents that belong to the process. A statement that the documents are “on file in the chanery” is not sufficient. Any document that is not in a language commonly used by the Roman Curia should be accompanied by a translation. While the norms require that three copies of the acts be sent to the Congregation (art. 25), it is to be understood that one set of the acts will contain all the original documents or certified copies and that there will be in addition two photocopied sets. The notary, however, is to authenticate each set of the acts (art. 13 §2).