

**KEY AND GUIDE
IN-PARISH MARRIAGE CASE
INVESTIGATION OF THE PREVIOUS MARRIAGE OF A CATHOLIC
(ONE PARTY MUST HAVE BEEN A CATHOLIC AT THE TIME OF THE MARRIAGE IN QUESTION)
WHEN INVALIDITY MAY ARISE FROM LACK OF CANONICAL FORM**

PURPOSE OF THIS FORM: Catholics, when they contract marriage with other Catholics or with non-Catholics, are bound to marry before a Catholic clergyman (Canons 1108; 1117). Two non-Catholics may validly marry before a minister, civil judge or justice of the peace. **This form can only be used if the previous marriage in question involved at least one Catholic at the time of that marriage.** If there is more than one attempted marriage outside the Church, additional forms should be used.

Freedom to marry by the party to the previous marriage in question is established when all the questions are answered and none of the responses refers the person to the Diocesan Tribunal.

BACKGROUND: This process is in accord with *Dignitas Connubii* Art. 5, §3 but was originally promulgated as a procedure in 1984.

THE ELEMENTS OF INVESTIGATION: The rest of this Instruction will try to explain the meaning and use of Form C. N.B. Keep in mind that this procedure may be used ONLY when the person previously married is a Catholic or is a non-Catholic who attempted marriage outside the Church to a Catholic.

1. Significance of Documents Required: A) A baptismal certificate is usually sufficient proof that a person is presumed to be bound to the Canonical Form of marriage; such a document should be a recent certificate drawn from the record book of baptisms where the Catholic party or parties were baptized. Please request the one drawing up the certificate to make reference to the presence or absence of any indications (about marriage) in the baptismal record of the person: such references should help to indicate whether or not there had been a convalidation, a sanation, or another marriage within the Church.

B) The civil marriage certificate should indicate the type of officiant who witnessed the marriage and, therefore, the fact that the canonical form was not followed.

C) The divorce decree indicates that the person is civilly free of the prior marriage so that there will be no danger of any civil suit for alienation of affection against the Catholic Church or against the Catholic priest called upon to witness the proposed marriage.

**ALL THREE OF THE DOCUMENTS ARE REQUIRED
AND MUST BE ATTACHED TO THE FORM C**

2. Significance of Item #3: Canon 1117 of the 1983 Code of Canon Law indicates that the canonical form is to be

observed as long as one or the other of the parties has been baptized in the Catholic Church or received into it and has not defected from the Church by a formal act. This law limits somewhat the applicability of the Canonical Form of marriage. However, it only affects those marriages which have taken place on or after November 26, 1983. On this date the 1983 *Code of Canon Law* became effective.

A circular letter from the Pontifical Council on Legal Texts of March 13, 2006 (PN 10279/2006) required that the Formal Act of Departure from the Catholic Church must be effected in writing before an Ordinary or Pastor and recorded in the Baptismal Register of the party. Thus, there would be a notation on the Baptismal Certificate to this effect. No other act including adherence to or joining a non-Catholic ecclesial communion constitutes departure from the Catholic Church. In case of doubt about these matters, consult with the Diocesan Tribunal office so that assistance can be given in making a judgment.

As of October 25, 2009 in a motu proprio *Ominum in Mentem*, Pope Benedict XVI changed the canons of the 1983 Code so that no one, once baptized a Catholic, can now leave the Latin Rite of the Catholic Church by a formal act. It had never been possible for Eastern Catholics.

3. Significance of Item #4: There was a similar provision under the 1917 Code for the period May 19, 1918 through December 31, 1948. The issue was not departure but lapsed Catholics.

4. Significance of Item #5: At the Second Vatican Council, in the decree on the Oriental Church, the Fathers of the Council declared a new law which enabled Eastern Rite Catholics to contract marriage validly with Eastern Orthodox in the Eastern Orthodox Church, even though such marriages would be illicit without the usual dispensation or permission. In post-Vatican II legislation, the Congregation for the Oriental Church, with the full approval of His Holiness, extended this provision to those cases in which Latin Rite Catholics contract marriage with Eastern Orthodox before the Eastern Orthodox priest. Thus, in those situations, after March 25, 1967, when a Latin Rite Catholic married an Eastern Orthodox person in the Eastern Orthodox Church, such marriages are to be considered valid even though illicit. If you ever seem to have a case like this, it would be well to consult the Diocesan Tribunal.

5. Significance of Item #6: You are requested to ascertain whether the parties approached a priest beforehand and, if so, who was approached. In this way you can have a way of checking whether something has been arranged in order to achieve a valid marriage even though the records do not

show evidence of a marriage in the Church. If there is a doubt about the matter consult the Diocesan Tribunal.

6. Significance of Item #7: In cases of mixed marriage, a dispensation from the required canonical form might have been granted. Usually, if the applicant is a Catholic, it is very likely that s/he will remember whether or not something had been arranged to enable a marriage to take place in a church or situation other than a Catholic church. However, if the applicant is a non-Catholic, it may be more difficult to be certain about this matter. In that case, some further investigation would be expected.

7. Significance of Item #8: If a Catholic priest was approached after a marriage outside the Church, a convalidation or even a sanation may have taken place. If the applicant is a Catholic, it may be, as mentioned above, easier to make determinations concerning whether a convalidation or sanation took place. In cases where the applicant is a non-Catholic, it may be necessary for you to refer the matter to the Diocesan Tribunal for additional investigation.

If a DISPENSATION FROM CANONICAL FORM were granted or the marriage was either CONVALIDATED OR SANATED, refer the matter to the Tribunal for a regular marriage case.

8. The Oath (#9): With regard to the oath mentioned, it would always be well to have the applicant make the oath after explaining to him or her the significance thereof.

9. Conclusion: If there are any questions about following this procedure, it would be well to refer these to the Tribunal.

Freedom to marry by the party to the previous marriage in question is established when all the questions are answered and none of the responses refers the person to the Diocesan Tribunal.

If freedom has been established, file completed form with marriage preparation papers. Nothing is sent to Tribunal or Chancery. Complete the form for permission required when there are prior obligations, Form D.