

ARCHDIOCESE OF INDIANAPOLIS

INVESTIGATION GUIDES FOR FREEDOM TO MARRY IN CASES OF LACK OF CANONICAL FORM

INSTRUCTIONS

BACKGROUND:

Catholics, when they contract marriage with other Catholics or with non-Catholics, are bound under the current law to marry before a priest and two other witnesses or, in the case of mixed marriages, be dispensed from the required Canonical Form for just cause. As in the past, so also now, the marriages of Catholics are considered valid only in those cases in which the Canonical Form is observed or in those cases in which a legitimate dispensation has been granted (Canon 1108).

In recent decades, the Church has required an administrative procedure at the level of the diocesan curia to establish the freedom to marry of persons who have attempted marriage outside the Catholic Church in those cases where one or both parties were bound to the Canonical Form. However, the Pontifical Council for the Authentic Interpretation of Legislative Texts has recently determined that the only process required is the administrative process mentioned in Canons 1066-67. In those Canons, the administrator of the process is the parish priest or the one who takes his place. (The documentary judicial process outlined in Canon 1686 does not apply to these cases.)

PURPOSE OF THIS FORM:

To assist the priests in the parish with their duties in this regard, the Archdiocese provides this additional form to be used in conjunction with the usual application for Marriage on those occasions in which it is needed. If there is more than one attempted marriage outside the Church, additional forms should be used.

ELEMENTS OF INVESTIGATION:

The rest of this Instruction will try to explain the meaning and use of the form. **N.B. Keep in mind that this procedure may be used ONLY when the person previously married is a Catholic or attempted marriage outside the Church with a Catholic.**

1. Significance of Documents Required (Cf. 14):

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 that the one drawing up the certificate make reference to the presence or absence of any indication (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 not recorded but celebrated within the Church.

Significance of Documents required (Cf: 14), cont'd

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 affections against the Catholic Church or against the Catholic priest called upon to witness the next marriage.

2. Significance of Item #5: Did the Catholic leave the Church?

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 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 27, 1983. On this date the 1983 Code of Canon Law became effective. Although we have little experience with this law, it would seem to be self-evident that if a Catholic has formally joined another church or has in writing or before witnesses indicated a firm purpose of withdrawal from the Catholic Church, and it is evident that in neither of these situations is the action jocular or obviously ephemeral, then such a person is not bound to the Canonical Form. If such a person after November 27, 1983, entered a marriage with a non-Catholic, a tribunal process would have to be instituted to establish freedom to marry. In doubts about these matters, the form recommends consultation with the Tribunal or the Chancery Office so that assistance can be given in making a judgement about those matters.

3. Significance of Item #6: Was this a marriage in an Eastern Orthodox Church?

At the Second Vatican Council, in the decree on the Oriental Churches, 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 Tribunal or the Chancery Office.

4. Significance of Item #7: Was it a Catholic marriage ?

You are requested to ascertain whether or not the parties did approach a priest beforehand and, if so, which priest. In this way you can have a way of checking whether or not something had been arranged in order to achieve a valid marriage even though the records do now show evidence of a marriage in the Church, if there is a doubt about the matter.

5. Significance of Item #8: Was there a dispensation from Canonical Form ?

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 he or she 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.

(Rev. 3/07)

Significance of Documents required (Cf: 14), cont'd

6. Significance of Item #9: *Was there a convalidation or sanation ?*

If a Catholic priest was approached after a marriage outside the Church, a convalidation or a sanation may have taken place. If the applicant is a Catholic, it may be, as mentioned above, easier to make determinations concerning whether or not 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 Tribunal or the Chancery Office for additional investigation.

7. The Oath (#10)

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.

8. Conclusion

If there are any questions about the application and the carrying out of this procedure, it would be well to refer these to the Archdiocesan Tribunal or the Chancery Office.

(Rev. 3/07)

ARCHDIOCESE of INDIANAPOLIS

Freedom to Marry: Lack of Canonical Form

(N. B. Please use maiden name for last name of a woman.)

1. Person previously married: _____
(First) (Last) (Religion)
2. Previous spouse: _____
(First) (Last) (Religion)
3. Date and Place of Previous Marriage:

(Date) (Place) (Type of Officiant)
4. Document Check List:
 - Recent Baptismal Certificate(s) of Catholic Person(s) with indications concerning any notations about marriage
 - Marriage Certificate
 - Divorce Decree
5. If the marriage took place (Cf. #5 above) on or after November 27, 1983, has the Catholic party ever joined another Church or publicly left the Catholic Church? _____. If so, please consult the Tribunal or the Chancery Office.
6. If the marriage took place (Cf. #3 above) on or after March 25, 1967, did the Catholic party marry an Eastern Orthodox person in the Eastern Orthodox Church? _____. If so, please consult the Tribunal or the Chancery Office.
7. Did the parties to the marriage in question approach a priest beforehand? _____.
Name of Priest: _____
8. If the marriage in question was a mixed marriage, was a dispensation from the requirement of Canonical Form granted for this marriage? _____. In doubt, consult the Chancery Office of the diocese of the place where the marriage took place to see if such dispensation had been granted.

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Freedom to Marry: Lack of Canonical Form, cont'd

9. Was a Catholic priest approached after the marriage outside the Church?
_____. Name of priest: _____.

Were there efforts made so the Catholic party could have the marriage recognized
in the Catholic Church? _____. If so, please describe below.

N.B.: If there were such efforts, priest should check for possible convalidation or
sanation at appropriate parish and/or diocesan chancery.

10. Please administer the following oath:

I SOLEMNLY SWEAR TO THE BEST OF MY KNOWLEDGE THAT I HAVE
NEVER MARRIED IN ACCORD WITH THE LAWS AND TEACHINGS OF
THE CATHOLIC CHURCH AND THAT IN THE MARRIAGE
MENTIONED IN THIS APPLICATION I (MY FORMER SPOUSE) WAS
BOUND TO THE CATHOLIC FORM OF MARRIAGE. SO HELP ME GOD!

(Signature of applicant)

11. I, the undersigned, affirm that the foregoing information is true to the best of
my knowledge and that the applicant appears sincere in all of his/her responses.

(Pastor, Associate, Delegate)

Parish: _____

Date: _____

Place: _____

Parish Seal

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