

## **ADVOCATE FOR PETITIONER IN MARRIAGE CASES JOB DESCRIPTION**

### **I. Terminology**

- A. Petitioner: the divorced person, Catholic or non-Catholic, who seeks clarification of one's marital status in the eyes of the Church. Usually, the person is seeking, "petitioning," for a declaration of invalidity for a prior marriage so that marriage may be contracted anew in the Church.
- B. Respondent: the former spouse of the petitioner. Sometimes, there is more than one previous marriage and, therefore, more than one respondent.
- C. Advocate: the priest, deacon or other pastoral minister, who advises the petitioner in the canonical process to clarify his/her marital status.
- D. Petition: the formal request that the petitioner submits to the tribunal for its judgment concerning the status of a prior marriage.
- E. Tribunal: the Church's court that examines the petition and renders a judgment. Minimally, the tribunal consists of the judge, defender of the bond and the notary.

### **II. Purpose and Qualifications**

- A. Assisting a divorced Catholic, who desires to remarry or to obtain canonical recognition of a marriage is a significant pastoral service. Every parish priest and permanent deacon should have received the necessary canonical education to act as advocate for the person. Other parish ministers must receive the necessary education and training before undertaking this work. The minister will usually fulfill two roles in a marriage case.
- B. As minister, he/she will help the petitioner through the annulment procedure with appropriate pastoral counseling. Old wounds that need healing and other issues in the petitioner's previous marriage and past life frequently surface during the process.
- C. As advocate, he/she assists the petitioner in preparing the case for the Tribunal

### **III. The Advocate's Responsibilities**

- A. Letter of recommendation. In each case, the minister must submit to the Tribunal a letter of recommendation on behalf of the petitioner. The letter indicates why the petitioner seeks a declaration of nullity, (e.g., to enter or validate a marriage, to be free to remarry, for the sake of conscience) and the sincerity of the petitioner in seeking the annulment. Does the petitioner desire full and active participation in the Church as the goal of the process? Or, in the case of a non-Catholic petitioner, is he or she really facilitating the (future) Catholic spouse's full and active participation in the Church? In general, the sincerity of the petitioner will quickly become known by his/her willingness to do the necessary work.  
This letter constitutes the pastoral minister's acceptance of the role of advocate. This letter is submitted along with the petitioner's deposition and other documentation.
- B. Assist the petitioner in filling out the preliminary investigation form, in obtaining the required documents and, in general, satisfying the requirements of the process. The advocate tries to determine at the beginning, the type of case (see the preliminary investigation form for brief description of each type of case). We encourage advocates to contact the Tribunal by e-mail or phone at any stage of the process to clarify the manner in which to proceed. Advocates should discourage petitioners from contacting the Tribunal, but should personally resolve their questions, contacting the tribunal as necessary.
- C. Advise the petitioner that a complete, detailed deposition is always required in formal cases. In other cases, there must be, at least in summary manner, an account of the circumstances of the former marriage(s), the reasons for its breakdown, mention of how the petitioner is fulfilling any obligations that still remain from this union (see Canon 1071.1, n.3).

#### IV. Formal Case Procedure

This is a case in which the "formalities" of a canonical trial are required.

- A. If the advocate determines that a formal case procedure is required, the most important service is obtaining a complete account of the marriage from the petitioner.
- 1) In the majority of cases it will be sufficient to interview the petitioner using the formal case questionnaire. After this, the petitioner writes out (using a word processor or typewriter when possible) his/her statement (deposition), generally 4-6 pages. This is the preferred system. The petitioner returns to the advocate, who reviews the deposition and asks additional questions and clarifications, if needed. Both petitioner and advocate then sign the deposition.  
In some instances, it will be necessary for the advocate to record and transcribe the deposition or compose a statement from notes taken down in the interview. If the advocate has transcribed or otherwise composed the statement, the petitioner reads and signs the deposition. The Advocate should translate or provide a translation of the deposition of a non-English speaking petitioner. The Tribunal's access to translation assistance is limited, and cases may be long delayed when the advocate does not provide a translation.
  - 2) Make sure the petitioner's account is complete. The deposition covers the petitioner's formative experience, what he/she knows of the respondent's background, and their courtship and marriage. Disclosure of unpleasant and embarrassing information is important. The Tribunal will receive information from several sources. The credibility, sincerity and spiritual growth of the petitioner is enhanced rather than damaged by a revelatory deposition.
  - 3) The opportunity for the petitioner to verbalize one's life and marital experience is one of the most important pastoral services provided by the advocate. Obstacles to growth and to success in a future marriage may be uncovered. Suggesting counseling is sometimes in order.
- B. With the petitioner's cooperation, the advocate submits the following acts and documents in order for a formal case to be accepted by the Tribunal.
- 1) The advocate's letter of recommendation.
  - 2) Copies of the marriage certificate and decree of divorce. (It is normally the petitioner's responsibility to obtain copies of these civil documents)
  - 3) Baptismal certificates. For non-Catholics, the baptismal status is to be clarified and a certificate obtained if possible. For a Catholic, the advocate can be helpful by providing the address of the parish where a person has been baptized, or the advocate may request the certificates. A newly issued baptismal certificate is preferred, and in some instances is mandatory. Many Catholics are unaware that a certificate of one's baptism can easily be obtained from the parish where the person was baptized.
  - 4) The completed "preliminary investigation" form for marriage cases. The petitioner may not know certain details, e.g., the respondent's place of birth or date of baptism, but certain items are essential:
    - a) the present name and address of the respondent. The respondent has the right to participate in the process and this right must be respected. When the petitioner does not know the former spouse's address, he/she should contact someone (e.g., parents, adult children of the couple) who may know the location. If even this is not possible, the petitioner must supply an account of when contact with the respondent was lost, and the steps that have been taken to locate the respondent.  
In rare instances, contacting the respondent represents a threat to the security of the petitioner or to the family. Such a claim must be corroborated by, e.g., a counselor's testimony or a court's restraining/no-contact order.
    - b) The name and location of the Church where a Catholic marriage was celebrated. The Tribunal will request the prenuptial investigation from the parish.

- c) Names and address of competent witnesses. Normally, 4 witnesses should be identified. A witness should have known at least one of the parties from well before the marriage and know the problems in the marriage and the reasons for its breakup. The petitioner must check with the witnesses to see if they are willing to cooperate. Witness can be parents, relatives, friends, pastoral ministers, neighbors, co-workers, etc. Children of the marriage are usually not acceptable. Indicate the relationship of each witness to the petitioner and respondent.  
It is helpful to suggest that the petitioner names at least one witness who may be more personally acquainted with the respondent and his/her point of view. If a sufficient number of witnesses is not available, the reason for this lack of witnesses must be submitted.
- d) If the petitioner, or the couple, had seen a counselor, his/her testimony as an expert witness should be obtained. The Tribunal will request this testimony, having received the name and address of the counselor and a signed release from confidentiality form.
- e) The more thorough the work of the advocate, the more quickly the Tribunal can proceed to a decision. The advocate does a disservice to the petitioner by presenting incomplete and inaccurate information, leaving it to the Tribunal to gather information.
- f) The court will conduct the part of the investigation not done by the advocate, viz. obtaining the deposition of the respondent and the witness testimony; obtaining ecclesiastical documents such as the prenuptial investigation. In some situations the Tribunal must obtain competence from the respondent's judicial vicar in order to adjudicate a petition.
- g) Financial responsibility is indicated on the preliminary investigation form.

## V. Mechanics of the Decision

- A. Once the proofs are completed, a summary of the facts is prepared. In a contentious case, i.e., when the respondent contests the petition, the parties are allowed to review the acts (*acta*, the documents and testimony) that the judge deems necessary for review. The Defender of the Bond reviews the acts and verifies that procedure was followed, and indicates whether he objects to an affirmative decision. The judge then renders a decision. Normally, only decisions in favor of nullity (affirmative decisions) will be rendered. This does not mean that *every* case will be decided in the affirmative. If the judge finds insufficient proof of nullity, he will not render a negative decision. Rather, the advocate will be urged to seek more and better proofs, or the case will be abandoned.
- B. After an affirmative decision, the respondent is informed of his/her right of appeal unless this right was waived earlier in the process; the case is sent to the Metropolitan Tribunal of Seattle to be reviewed by a three judge Tribunal of second instance. If the first instance decision is confirmed or upheld upon appeal, notification of the annulment will be sent to the parties and advocate. This notice or Publication of Sentence will include any requirement for counseling or constraints on a new marriage included in the decision.

## VI. Time Limits

- A. No petition for a declaration of invalidity will be accepted before one year has elapsed since the divorce of the parties, unless there has been a separation of two or more years before the final decree of divorce. No petition for nullity is accepted before the civil divorce.
- B. The law (canon 1453) urges that first instance procedure be completed within one year and the second instance within six months. The Tribunal will meet these deadlines provided that the necessary proofs are collected. Once the necessary documents and sufficient proofs have been gathered, the first instance decision and second instance confirmation can be accomplished in 3 - 4 months. But the court has little control over the cooperation of witnesses and the principals.
- C. A case will be abandoned if petitioner or witnesses fail to cooperate and no acts are submitted for 6 months (C. 1520).

- D. Never set a wedding date until you have received notification that a declaration of nullity has been granted.

(Protocol for Advocates revised Dec. 10, 2013)