



FORMAL OR LACK OF FORM: WHAT TYPE OF CASE IS IT?

Continuing our review of cases for a declaration of nullity, we turn now to the two major types of cases with which we deal at the tribunal: formal cases and lack of canonical form cases. Knowing the difference between the two is important for pastoral ministers who help people seeking an annulment because the two types of cases are significantly different, with different paperwork and proofs. Completing the proper documents with people before sending them to the tribunal saves time, effort, and frustration for everyone.

Once you are sure that our tribunal is competent to process the case (*see issue 5*), the next step is to determine the religion of both parties in the case (the person seeking the annulment and his/her ex-spouse) at the time of the wedding. If either party was baptized in or received into the Catholic Church prior to the wedding, then, for legal purposes, he or she is considered Catholic, even if he or she was not a practicing Catholic at the time.

As the very first canon of the Code of Canon Law states, canon law normally only binds Catholics. This means that only Catholics are bound to observe the canonical form of marriage, as detailed in canon 1108: “Only those marriages are valid which are contracted before the local ordinary, pastor, or a priest or deacon delegated by either of them, who assist, and before two witnesses...”

After determining the religion of both parties at the time of the wedding and discovering that either of them were Catholic, the next question is whether they married in the Catholic Church according to the canonical form above. If they did, then you have a formal case and should complete that paperwork. If a Catholic did not marry in the Catholic Church according to the form above, then the celebration of the marriage lacks canonical form and the paperwork for a lack of canonical form case should be completed. The only exceptions to the latter are if the Catholic party received a dispensation from canonical form prior to the wedding or had the marriage validated or sanated in the Catholic Church after the wedding, in which case you are now dealing with a formal case again and should complete that paperwork.

So, what if, in your investigation, you find that neither party in the case was Catholic at the time of the wedding? Great news, because they don’t need an annulment then, right? **WRONG!** While marriages between two non-Catholics may not be sacramental, they can certainly be valid. Jesus did not invent marriage when he made it a sacrament. It is a human institution that predates and goes beyond Christianity. We therefore presume that every marriage, including those between non-Catholics, is valid until the contrary is proven (canon 1060), and so even non-Catholics with prior marriages must seek an annulment before they are free to enter a new marriage in the Catholic Church. Since they are not Catholic, they were not bound by canonical form at the time of the previous wedding, meaning that the marriage cannot be declared null due to lack of form. You are dealing with a formal case and should complete that paperwork.

That’s it for now. Have a blessed Lent, keep the faith, love God’s people, and always honor the code!

