



Concerning Issues: Lack of Canonical Form Cases

2014 Review and 2015 Focus

Most of the 2014 editions of *Concerning Issues* focused on what was required in preparing a couple for the valid celebration of marriage in the Catholic Church. In 2015 the monthly editions will focus on what is required to declare a marriage invalid after it has ended in divorce.

There are three main reasons for declaring a marriage invalid and each requires its own process. Simply stated, these are:

Form: At least one of the parties was a Catholic and the parties married outside the canonical form of marriage without the proper dispensation.

Impediment: At the time of consent there was an invalidating impediment present. The most common impediment (*ligamen*) is a previous marriage and divorce by one or both of the parties.

Consent— The consent given by either or both of the parties was defective for some reason. These are the most common cases and are often referred to as the formal process.

This issue of *Concerning Issues* will focus on the process of declaring a marriage invalid due to a lack of canonical form.

History of Canonical Form

Before the Council of Trent, there was no juridic form required for the valid exchange of marriage consent. Clandestine marriages, celebrated without the intervention of a priest or witnesses, were considered valid. To end the abuse of clandestine marriages, the Council of Trent issued the decree *Tametsi* on November 11, 1563. This required marriage to be celebrated before one's proper pastor, or a priest who had been given permission by the pastor or ordinary, and two witnesses. This decree was obligatory but only in those parishes where it was promulgated. Where the decree was not promulgated, clandestine marriages continued (especially in the north and east of Europe) causing much confusion in the Church.

In 1907, Pope Pius X ended clandestine marriages with the decree *Ne temere* which went into effect April 19, 1908. This decree obligated the canonical form everywhere for all Catholics. This decree made the presence of the pastor or ordinary "territorial" by stating that pastors could assist validly only within their territory. It also made their assistance "active" meaning that they had to ask for and receive the parties' consent in the name of the Church. The matter of *Ne temere* was then included in the 1917 Code of Canon Law and again in the 1983 Code.

Canonical Conundrum

Situation: A couple goes to Las Vegas and is married by an Elvis impersonator in a civil ceremony. The marriage lasts two weeks and ends in a divorce. Could the marriage be declared invalid by the Church due to a lack of canonical form?

Answer: It depends.

If one or both of the parties is a baptized Catholic and no dispensation from form was given, then yes. However, if neither party is Catholic, then neither party is bound to canonical form. Therefore, the union could **not** be declared invalid due to lack of canonical form. This would likely be a formal case.



Petitioning for a Decree of Nullity due to Lack of Canonical Form

In the Diocese of Erie the petition for a decree of nullity due to lack of canonical form is usually compiled by the parish priest or deacon and then forwarded to the Office of the Tribunal. Petitions (and M-B Forms) are available from the Tribunal Office or can be downloaded directly from the Office of Priest Personnel page on the diocesan website. Along with the completed and signed petition, the following documents are needed before the case can be processed:

- A certified and sealed copy of the marriage license application and record
- A certified and sealed copy of the final decree of divorce
- A baptismal certificate for the Catholic party(s) issued within the past six months
- Two MB-Forms (The MB-Forms will be returned to the parish and can be used as part of the pre-nuptial file for a pending marriage or convalidation.)
- \$30.00 processing fee

Unlike formal cases, there is no need to contact the Respondent unless the Respondent is a Catholic. Then, he or she is notified that the marriage has been declared invalid.

Often Asked Canonical Question

Is it diocesan policy that a couple must wait one year to have a marriage convalidated if they were married outside canonical form?

This is the policy in the Diocese of Erie. However, the particular circumstances in each case must be examined. If a couple makes the decision to be married on a beach by a justice of the peace and thinks they can just get the marriage "blessed" later, it would seem that couple would require the time to do some pastoral counseling to better discern the Sacrament of Marriage. However, there may be circumstances in a particular case that merit a relaxation of this policy. Questions about a specific case should be addressed to the Office of Matrimonial Concerns or the Chancery.