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# A MODEL FOR ECCLESIAL MEDIATION AT THE LOCAL LEVEL

ROGER A. KENYON\*

## A MODEL ECCLESIAL RIGHTS FORUM

From an awareness of human dignity flows the desire for better protection of human rights.<sup>1</sup> To this end, there is needed a system of positive law.<sup>2</sup> The Commission for the Revision of the Code of Canon Law took up the task of safeguarding the rights of persons by laying down principles governing the revision.<sup>3</sup> Principle seven focuses upon the need for alternative modes of recourse against acts of ecclesiastical administration. Such modes are realized at the regional and national levels by the enactment of a procedure for administrative recourse.<sup>4</sup>

At the diocesan or local level Ordinaries can voluntarily adopt a similar structure. The structure most often considered is a mediation and arbitration service. These services have been on the American scene since the National Conference of Catholic Bishops issued experimental procedures with the approval of the Holy See "until such times as other provi-

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<sup>1</sup> This is the premise of the Second Vatican Council, enunciated in its pastoral constitution "Gaudium et spes," 7 December 1965, in 58 A.A.S. 1025-1120, no. 73 (1966). The first chapter of "Gaudium et spes" is devoted to the dignity of the human person.

<sup>2</sup> *Id.* no. 75.

<sup>3</sup> 2 *Communicationes*, 77-85 (1969).

<sup>4</sup> The Canon Law Society of America voted unanimously at its 1982 national convention to "urge the National Conference of Catholic Bishops to act promptly to establish a system of first instance administrative tribunals on a regional basis and a national administrative tribunal of second instance in accord with the revised Code after its promulgation." The revised Code was promulgated on January 25, 1983 without reference to administrative tribunals. Since such tribunals were optional in the later drafts of the revised Code, deletion of universal legislation on their structure allows greater structural flexibility to those national episcopal conferences who wish to implement administrative tribunals.

sions might be made in the general law of the Church."<sup>5</sup>

Other provisions were made with the revision of the Code of Canon Law. The revision refers to the possibility of diocesan offices of equitable solutions.<sup>6</sup> Another option is the new oral contentious process. The following model is a modification of the oral contentious process, designed to combine the clarity of arbitration with the flexibility of mediation. Sample stylesheets and forms follow the norms.

Essentially, the Rights Forum provides a review process for the judicial protection of the ecclesial rights and duties of persons. In order to understand the process more clearly, it may be helpful to first understand what church law means by persons, rights, and duties.

*What does church law mean by a person?*

A person becomes a member of the church and acquires all the rights and duties of a Christian through baptism. To be a Christian, however, one need not be a Catholic. Likewise, Catholic membership does not automatically compel a person to lead a Christian life. It is helpful in this regard to distinguish between ecclesiastical and spiritual communities.

Ecclesiastical community refers to a particular religious denomination or association of persons based upon distinctive rituals and practices. Spiritual community is that fellowship shared by all followers of Jesus Christ in terms of faith, prayer, and charity. Spiritual community exists within various ecclesiastical communities. It subsists in the Catholic church, as the Second Vatican Council teaches,<sup>7</sup> and within other ecclesiastical groups.<sup>8</sup>

Although Christian rights and duties are acquired by the spiritual communion of baptism, they are exercised within the contours of ecclesiastical community. Should there be some obstacle to ecclesiastical communion, such as a penalty preventing one's participation (e.g., excommunication) or voluntary withdrawal from the church (e.g., apostasy), then the exercise of one's rights is likewise impeded.<sup>9</sup>

Age is another factor affecting rights and duties.<sup>10</sup> Baptized persons who are at least seven years old and have attained the use of reason are bound by ecclesiastical law. Minors (persons under 18) who are bound by

<sup>5</sup> N.C.C.B., ON DUE PROCESS 48 (rev. ed. 1972).

<sup>6</sup> Canon 1733.

<sup>7</sup> Vatican II, const. "Lumen gentium," Nov. 21, 1964, in 57 A.A.S. 5-75, no. 8, at para. 2 (1965).

<sup>8</sup> See Michael Hughes, "The Juridical Nature of the Act of Joining the Catholic Church," in 8 STUDIA CANONICA, 45-71, 379-431 (1974).

<sup>9</sup> Canon 96. Although such restrictions are placed upon one's rights, they do not affect the obligation to observe one's duties.

<sup>10</sup> Cf. Canons 97, 98.

ecclesiastical law are subject to parental guardianship for the exercise of their rights. This provision was intended to assist, rather than limit, young persons in making the best use of their rights. There are certain exceptions, however, whereby such young persons may exercise their rights themselves. For example, a 14-year-old may present a case involving a spiritual matter before an ecclesiastical court.<sup>11</sup>

In addition to physical persons, church law recognizes juridical persons as capable of having rights and duties. The rough equivalent of juridical persons in secular law are corporations. Juridical persons, like corporations, exist independently of any physical persons. Some of the more familiar juridical persons are the diocese, parishes, and religious congregations. Catholic schools, hospitals, seminaries, and the like are part of their property, and may also be juridical persons. Juridical persons are regarded as equivalent to minors<sup>12</sup> and as such must act through authorized representatives.

*What is a right and what is a duty?*

A duty, simply put, is a recognized obligation. Recognition may take many forms, but typically it involves some act by a legitimate authority acknowledging the existence of an obligation. The recognition of ecclesial duties can therefore be found in Conciliar documents, papal pronouncements, and in the Code of Canon Law, to give a few examples.

Ecclesial obligation may be understood this way. A person capable of doing something which is conducive to communion is obliged to do it. Communion is understood here in its wider sense as the coming together of individuals and God; the sharing of selves, of what a person is and has. In communion, one participates with others, and through them, with God. It follows that if something is detrimental to communion, then a person is obliged to forbear doing it.

The concept of a right, though somewhat involved,<sup>13</sup> is basically a

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<sup>11</sup> Canon 1478.3.

<sup>12</sup> Canon 118.

<sup>13</sup> Cf. John XXIII, encycl. "Pacem in terris," April 11, 1963, in 55 A.A.S. 257-304, at para. 30 (1963). A right is a provision favoring an option. More specifically, a right is a normatively enacted social provision favoring an option of all members by presumption and sanction. Further, a right is a social provision placed by custom, common consent, positive act of legislation, or other means of normative enactment, favoring the option of all members of a social system to do, have, or receive something by placing the burden of exception upon one who would deny the same and, in the absence of exception, by sanctioning the exercise of one's option typically through provisions for prevention against interference in the exercise of one's option, provisions for remedy in the event of interference, or provisions for ensuring the supportive performance of others. The three sanction provisions are said to be typical. They are to be understood as paradigms. Therefore, the absence of one or the other does not detract from the definition. So, too, their measure of effectivity is relative. The remedy in

normative provision favoring the option of all members<sup>14</sup> of a society to do, have, or receive something.<sup>15</sup>

*What are the rights and duties of persons in the church?*

There exists in the church a radical equality of membership and mission,<sup>16</sup> for all are called to belong<sup>17</sup> and all are sent to bear witness.<sup>18</sup> This convocation and commission rests upon the church as a whole and upon each member in the call to holiness.<sup>19</sup> From this fact of radical equality there follows a recognition of certain fundamental rights and duties common to all the faithful. All members of the faithful equally enjoy the right to:

Hear the word of God and participate in the sacramental and liturgical life of the church;<sup>20</sup> Exercise an apostolate,<sup>21</sup> take initiative in the church,<sup>22</sup> and worship according to one's rite and form of spiritual life;<sup>23</sup> Freedom of inquiry, information, and expression in matters of concern to the good of the church;<sup>24</sup> Christian education<sup>25</sup> and choice of state in life;<sup>26</sup> Respect, reputa-

the event of infringement upon one's right to possess property might be a claim against the violator. Instead of a claim, criticism against the offender might be all a natural or human right can muster. See Benn, *Rights and Duties*, in 7 *ENCYCLOPEDIA OF PHILOSOPHY*, 195-99 (P. Edwards ed. 1972).

<sup>14</sup> Rights exist with respect to a social system and extend over all members of the system. They differ in this respect from privileges, which belong to only certain members. The right of all students to see their report cards, for example, compares with the privilege granted to honor-roll students to, say, use a special lounge. But suppose a certain straight-A student is stopped by the hall monitor from entering the lounge. The student in this case might insist upon his right as an honor-roll student to use the lounge. What is a privilege in system X to a subset Y is a right when Y is considered without reference to X, for it pertains to all members of Y.

<sup>15</sup> Rights also exist in contingent form and become vested when one complies with a particular juridical fact. The right to vote, for example, is vested by matriculation.

<sup>16</sup> See Vatican II, *supra* note 7 "Lumen gentium," no. 32; Vatican II, *supra* note 1 const. "Gaudium et spes," no. 29; Canon 208.

<sup>17</sup> Vatican II, *supra* note 7, "Lumen gentium," no. 13.

<sup>18</sup> *Id.* nos. 9-13, 17.

<sup>19</sup> *Id.* no. 17 n.21, no. 40; Matthew 5.48 decree "Ad gentes Divinitus," Dec. 7, 1965, in 58 A.A.S. 947-90, no. 23 (1966).

<sup>20</sup> *Id.* no. 37; see also Vatican II, const. "Sacrosanctum concilium," Dec. 4, 1963, in 56 A.A.S. 97-138, no. 14 (1964); Canons 212.3, 213.

<sup>21</sup> Vatican II, dec. "Apostolicam actuositatem," Nov. 18, 1965, 58 A.A.S. 837-64, no. 25 (1966); see also Vatican II *supra* note 7, "Lumen gentium," no. 33; Canon 211. On the exercise of one's charism, see Vatican II *supra* note 7, "Lumen gentium," no. 12.

<sup>22</sup> Vatican II, *supra* note 21, "Apostolicam actuositatem," no. 24; Vatican II, *supra* note 1, "Gaudium et spes," no. 37; Canon 216.

<sup>23</sup> Canon 214.

<sup>24</sup> Vatican II, *supra* note 1, "Gaudium et spes," nos. 26, 62; Vatican II, *supra* note 7, "Lumen gentium," no. 37; Vatican II dec. "Inter mirifica," Dec. 4, 1963, in 56 A.A.S. 145-47, at no. 5 (1964); John XXIII, *supra* note 13, "Pacem in terris," par. 12; Canons 212.3 and 218.

<sup>25</sup> Vatican II, dec. "Gravissimum educationis," Oct. 28, 1965, 58 A.A.S. 728-39, at nos. 1, 2 (1966); see also Vatican II, *supra* note 1, "Gaudium et spes," no. 26; Canon 217.

<sup>26</sup> Vatican II, *supra* note 1, "Gaudium et spes," nos. 26, 52; see also John XXIII, *supra* note

tion, and privacy;<sup>27</sup> Freedom of assembly, association,<sup>28</sup> and religious expression.<sup>29</sup>

The right to defend one's rights before the church is conveyed in revision canon 221 and provides that:

there exists a competent ecclesiastical forum for the vindication of one's rights in the church; one be judged according to the prescriptions of law, applied with equity; and, no one be canonically penalized except according to law.

As John XXIII expressed in his encyclical "Pacem in Terris,"<sup>30</sup> to every right there is a correlative duty to preserve it and to every right there corresponds a duty in other persons to respect it. Thus, the ecclesial rights just mentioned carry an implicit set of correlative and corresponding duties. The right to exercise an apostolate, for example, requires that it be done in such a way as to preserve the integrity of the right, and be performed in coordination with related apostolic activity of the Church so as not to infringe upon the rightful activity of others or itself be impeded.

There are few explicit ecclesial duties incumbent upon all the faithful. The Second Vatican Council reiterated the gospel duty to live a life of holiness<sup>31</sup> and reminded the faithful to provide for the financial support of the church<sup>32</sup> and to accept its teaching and governing authority.<sup>33</sup>

Members of the clergy are bound by duty to:

Observe celibacy,<sup>34</sup> humility and hierarchical obedience;<sup>35</sup> Pursue sanctity through the exercise of pastoral ministry, sacramental service, scripture

13, "Pacem in terris," par. 15; Canon 219.

<sup>27</sup> Vatican II, *supra* note 1, "Gaudium et spes," no. 26; Vatican II, *supra* note 7, "Lumen gentium," no. 27; John XXIII, *supra* note 13, "Pacem in terris," par. 12; Canon 220.

<sup>28</sup> Vatican II, *supra* note 21, "Apostolicam actuositatem," no. 19; John XXIII, *supra* note 13, "Pacem in terris," par. 23; Canon 215.

<sup>29</sup> Vatican II, decl. "Dignitatis humanae," Dec. 7, 1965, 58 A.A.S. 929-46, no. 2 (1966); *see also* Vatican II, *supra* note 1, "Gaudium et spes," no. 26. Actually, as both of these references indicate, religious liberty is a right of the human person and is not limited to members of the Church.

<sup>30</sup> John XXIII, *supra* note 13, "Pacem in terris," at 29-30.

<sup>31</sup> *See* Vatican II, *supra* note 7, "Lumen gentium," chapt. IV; Canon 210.

<sup>32</sup> Vatican II, dec. "Presbyterorum ordinis," Dec. 7, 1965, 58 A.A.S. 991-1024, no. 20 (1966); Canon 222.

<sup>33</sup> Vatican II, *supra* note 7 "Lumen gentium," no. 37; Vatican II, *supra* note 32, "Presbyterorum ordinis," no. 9; Canon 212.3.

<sup>34</sup> Married deacons are bound by duty to observe chastity. Canon 277. Vatican II, *supra* note 32, "Presbyterorum ordinis," no. 16; Synod of Bishops, doc. "Ultimis temporis," Nov. 30, 1971, 7 C.L.D. 342-65, pt. II, no. 4.

<sup>35</sup> Canon 273. Vatican II, *supra* note 32, "Presbyterorum ordinis," nos. 7, 15.

reading, spiritual retreats, prayer, and participation in the Liturgy of the Hours;<sup>36</sup> Reside in their diocese,<sup>37</sup> wear appropriate ecclesiastical attire,<sup>38</sup> and fulfill the office committed to them;<sup>39</sup> Acknowledge the mission of the laity in the church;<sup>40</sup> Conduct themselves with prudence when associating with persons whose company can cause scandal;<sup>41</sup> and Abstain from all that is unbecoming or foreign to the clerical state,<sup>42</sup> including activities of a commercial, political, or military nature.<sup>43</sup>

There are few explicitly expressed universal rights of clerics. One, however, is the right to equitable remuneration, health care, and retirement benefits.<sup>44</sup> Provisions for ongoing theological and pastoral studies are another.<sup>45</sup> To this latter right there corresponds the duty to pursue sacred studies in an ongoing manner.<sup>46</sup> Indeed, every ecclesial duty may be construed as a right to the same object (activity or possession).<sup>47</sup> Several of the classical rules of law support this position.<sup>48</sup>

A person removed from ecclesiastical office has a right to transitional support.<sup>49</sup> Lay persons in the service of the church<sup>50</sup> have the right to remuneration befitting their condition and to retirement, social security, and medical benefits.<sup>51</sup> And anyone who feels wronged by an act of church administration has the right to hierarchical recourse.<sup>52</sup>

It should be emphasized that the foregoing lists are exemplary rather than exhaustive and must be understood in light of their contexts and

<sup>36</sup> Canon 276. Vatican II, *supra* note 32, "Presbyterorum ordinis," nos. 12, 13.

<sup>37</sup> Canon 283.

<sup>38</sup> Canon 284.

<sup>39</sup> Canon 274.2.

<sup>40</sup> Vatican II, *supra* note 21, "Apostolicam actuositatem," no. 25. C. 275.2.

<sup>41</sup> Canon 277.2.

<sup>42</sup> Canons 282, 285.

<sup>43</sup> Canons 286, 287.2, 289.

<sup>44</sup> Vatican II, *supra* note 32 "Presbyterorum ordinis," nos. 20, 21; and Paul VI, m. p. "Ecclesiae sanctae," Aug. 6, 1966, in 58 A.A.S. 757-87, at pt. I, no. 8. C. 281 (1966).

<sup>45</sup> Vatican II, *supra* note 32, "Presbyterorum ordinis," no. 19; Paul VI, *supra* note 44, "Ecclesiae sanctae," pt. I, no. 7.

<sup>46</sup> Canons 129-131; and Vatican II, *supra* note 32, "Presbyterorum ordinis," no. 18; Canon 279.

<sup>47</sup> An ecclesial duty is the obligation to do or have that which is conducive to communion. Given that the object of activity or possession is conducive to communion, it is thereby incumbent upon each member of the community to see that its realization is at least not impeded. According to the structure of an ecclesial right as described by John XXIII then, the person who has an ecclesial duty to do or have something likewise enjoys a right to it.

<sup>48</sup> "He who bears the burden should receive the benefit, and vice-versa." Boniface VIII, R. I. 55 in VI<sup>o</sup>; *see also* R. I. 6, 41, 42, and R. I. 2 of Gregory IX.

<sup>49</sup> Canon 195. A person removed automatically by operation of law such as by publicly departing from Catholicism, has no canonical right to transition support. *See id.*

<sup>50</sup> RCCL 230.1.

<sup>51</sup> Canon 231.

<sup>52</sup> Canon 1731.

church life.

*What is the Rights Forum and How Does it Work?*

The Rights Forum is founded upon the principle that no fundamental right or freedom shall be challenged without adequate justification or equitable means of vindication. Locally, there are three options to this end. One is hierarchical recourse or the grievance process.<sup>53</sup> This involves taking the matter to the supervisor of the person with whom one has a conflict. The second option is mediation.<sup>54</sup> Mediation is a negotiated settlement which the parties voluntarily agree to observe. It is the parties themselves who work out a plan of action to execute their agreement. The mediator facilitates discussion between them, keeping the process moving without undue delay, and clarifies the parameters of fruitful exchange. The third local option, the Rights Forum, is outlined below. In any option the first step is to talk with the individual with whom one has the conflict. Perhaps this will clarify or correct the matter in the simplest way. If this method fails to prove satisfactory or is not practical, these three options provide an alternative to more formal measures, such as civil litigation.

#### GENERAL NORMS

1. The Rights Forum is open to all members of the Catholic Church in the Archdiocese of Seattle. The Forum is a function of the tribunal and operates according to the oral contentious procedure as defined in canon law and herein modified.<sup>55</sup>
2. Judges, who must possess a licentiate in canon law or otherwise exhibit a mature familiarity with same, are appointed by the bishop from among the laity, religious, and clergy of the diocese. They serve a term of office as determined by Tribunal policy.
3. Judges are to be guided in their actions by the prescriptions of canon law and the principles of equity. It should be clearly understood by all involved that this process distinguishes itself as an ecclesial forum in pursuit of that which is conducive to communion among people and before God. This process is for church purposes. Neither the Corporation of the Catholic Archbishop of Seattle nor any of its agencies or employees assumes responsibility for the effects or ramifications at secular law of the Rights Forum adjudications.
4. Rights Forum jurisdiction extends to conflicts concerning the violation of a person's rights or duties in the Church, excluding matters of mat-

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<sup>53</sup> See *id.*

<sup>54</sup> Canon 1733.

<sup>55</sup> RCCL 1656-1670.

- rimonial nullity. The process does not extend to conflicts for which there exist required avenues of subsidiary settlement.
5. The party who presents a request for rights review and the party called to respond shall be designated "petitioner" and "respondent," respectively. A party may be represented by proxy provided the latter produces evidence of such a mandate to the moderator. A party to the dispute may be accompanied by an adviser provided the adviser possesses a graduate degree in the sacred sciences or otherwise demonstrates a mature familiarity with the life and teachings of the church.
  6. The petition is to be rejected if:
    - a. the parties have not first attempted by themselves to work out an agreement, or
    - b. the controversy does not meet the criteria of general norm four, or
    - c. the petition does not present a cause of action, even if all the facts alleged were proven true.<sup>56</sup>
  7. The parties are to be assessed a standard fee according to Tribunal policy for processing expenses. The fee may be waived due to special financial circumstances of the parties. All other related expenses, including those incurred in the production of evidence and presentation of witnesses, shall be borne by the parties incurring them, unless the parties agree or the adjudication award specifies otherwise.
  8. The local norms on Rights Forum apply in the form in effect when review action is initiated. Questions concerning the interpretation of these rules shall be referred to the Forum moderator. Bylaws for the further implementation of these norms shall be made by majority decision of the judges' panel.
  9. Judges may derogate from procedure provided the essence of the process (that is, the purpose or spirit of the norm) is preserved according to canonical equity and the procedure substituted safeguards justice. This may be done in order to expedite matters, promote resolution, or exhibit personal sensitivity.<sup>57</sup>

#### ORIENTATION

Orientation is a preliminary process for determining whether a conflict should be directed toward rights review or referred to hierarchical recourse or mediation. The process serves to clarify the intention of the party bringing the complaint, to safeguard subsidiary forms of settlement, and to appraise the utility of rights review given the intention expressed and the apparent nature of the conflict.

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<sup>56</sup> The facts upon which an accusation is based, even if entirely true and proven, would be insufficient to render the decree null or require reparations.

<sup>57</sup> Canon 1670.

## RIGHTS REVIEW

1. Rights review is a third-party settlement of a controversy concerning rights or duties in the church. In rights review, the parties refer their dispute to an impartial individual for determination on the basis of information they present and the provisions of church law and equity.
2. Rights review may be taken against any act on the basis that the act violates a person's rights either in substance<sup>58</sup> or in procedure.<sup>59</sup>
3. Rights review begins with the acceptance of a petition. If the respondent declines to participate, either expressly or by presumption in giving no response within ten days, then the petitioner has the option of asking that the review process proceed even in the absence of the respondent or of pursuing the matter through other avenues of justice. Upon receiving indication of the respondent's willingness to participate in the process, the moderator will assign a judge to preside.
4. Hearings are held at the Chancery on the first and third Mondays of the month. They are to be held privately and any information obtained shall be treated confidentially. Throughout the process the judge shall rule on all questions of procedure, order, and relevance and shall render decisions on the best available evidence. The judge may also pose questions and can call for such additional evidence as deemed necessary for an understanding and determination of the dispute.
5. The burden of proof is upon the petitioner.
6. At the first session, the judge shall rule on whether the allegedly offensive act is to be suspended. Sessions shall begin with the petitioner and proceed according to the following format:
  - a. Presentation Period. Each party is given the opportunity to present evidence or other information pertaining to the petition or response. The parties should present their material in a logical manner with specific facts and examples.
  - b. Question Period. The parties may pose questions to one another on matters raised in the petition/response or in the presentation period. Questions should be phrased so as to clarify the problem area and facilitate appreciation of each other's views.
  - c. Proposal Period. After the presentation and question periods, the judge will relate a description of the interests at issue and a preliminary proposal for satisfying them. The parties are to address themselves specifically to this proposal in their subsequent critiques.

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<sup>58</sup> A right is violated in substance if it is violated arbitrarily without adequate justification. This includes the case in which motives alleged in the decree were untrue.

<sup>59</sup> Without prior consultation, the opportunity for refutation, or informed and impartial authorization, is negated.

- d. Critique Period. Each party is given the opportunity to review the proposal in light of the information and interests identified. A series of proposal and critique periods may be allowed at the judge's discretion should it be deemed beneficial to the process.
7. Duly admitted proxies, advisers, and witnesses are entitled to attend the hearings. It shall be in the discretion of the judge to determine the propriety of the attendance of any other person. The process may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment from the judge.
  8. The award of the judge shall incorporate the final critiqued version of the proposal. It is to be reduced to writing within fifteen days. The award can confirm the act at issue or declare it null, in part or whole, and define corrective measures. It shall have the effect of a canonical judgment.
  9. Either party may ask for a review of the procedures followed during rights review or the suitability of the award, but not the merits of the case as such. Such a request automatically suspends the effect of the award until the procedural review process has been completed.
    - a. The bases for review are: partiality or prejudice of a judge; selection of or action by a judge inconsistent with these norms; deceptive procurement of the award; falsity of the documents on which the decision is based; violation of fundamental procedural fairness; or discovery of new evidence which suggests a different decision.
    - b. A request for procedural review may be presented following the award. In such a case the moderator shall refer the matter to a disinterested member of the judges' panel. If the referee finds for nullity or for modification of the award on any of the aforementioned bases, he or she can order a correction before either the judge who made the award or before another judge chosen by the moderator. If the referee does not find for nullity or modification, the award shall be confirmed.