

SUMMARY

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Comment; Rule 3:04

Mr. Smith expresses concern that an organization the current proposed language for Rule 3:04, notwithstanding Comment 1, is discriminatory against judges or potential judges belonging to various religious organizations that may set requirements on membership or, more particularly, the holding of an office, on the basis of gender or sexual orientation. He points out that despite Comment 2's statement that the rule "does not prohibit a judge's membership in any organization dedicated to the preservation of religious...values", it is not sufficient to protect judges who belong and participate in many conservative Christian, Jewish or Muslim groups, among other religious groups.

He urges that the phrase "sexual orientation" should be removed from the text of Rule 3:04 and the text clarified to exempt religious groups restricting the holding of offices on the basis of gender. In the alternative, he proposes the following language, or something similar to it, should be added to the text of this rule:

"Nothing in this rule shall be construed to limit the free exercise of religion by judges. In particular, nothing in this rule shall prohibit judges from belonging to, serving as leaders in, or participating in the life of religious groups restricting membership on the basis of religious belief, religious practice or sexual orientation, or restricting the holding of religious office on the basis of gender or sexual orientation."