

Canon 2C

Rule 3.03

American Center for Law and Justice

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The American Center for Law and Justice (ACLJ) finds problematic the listing of particular kinds of “invidious discrimination” in current Canon 2C and proposed Rule 3.03 because the specific listing implies that other kinds of equally “invidious discrimination” by an organization would not be relevant to a judge who belongs to that organization. The Commission’s listing of specific categories of discrimination (“race, sex, religion or national origin” in current Canon 2C and proposed “ethnicity” and “sexual orientation” additions in Rule 3.03) implies that other bases of “invidious discrimination” (e.g., age, wealth, educational level, skin color, etc.) are irrelevant to members of such organizations who are judges. ACLJ favors a rule that states simply that judges should not belong to organizations that practice any type of “invidious discrimination”, thus obviating the inference of special and excluded bases of discrimination

As an alternate approach, the ACLJ suggests dropping the concept that judges should be the policemen of their membership organizations. The recusal rules would then be relied upon to ferret out the problem of judges who have or appear to have bias. Dropping this concept would also avoid the uncertainty of knowing precisely what kinds of discrimination will be deemed “invidious.”