

More than Meets the Eye: Responsible Representation of Religiously Diverse Clients

Annual Good Counselor Project National Lawyers Conference

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1.0 Credit Hour CLE (Elimination of Bias)

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CLE Credit Information

Program Focus

This CLE explores bias recognition, avoidance, and mitigation in professional judgment, client interaction, and advocacy, with **emphasis on religious diversity as a dimension of cultural competence.**

Elimination of Bias Qualification

- Religion is recognized as a protected category under elimination-of-bias and diversity CLE standards, providing the basis for dedicated bias credit.

CLE Credit Eligibility

- Dedicated elimination-of-bias or diversity has been approved or is anticipated in CA and CO.
- Ethics credit has been approved or is anticipated in the following states: FL, GA, IL, IN, NV, OH, OK, PA, TX, VA, and WI.
- Attorneys licensed in the following states also should be able to claim CLE credit (check applicable bar rules): CT, NJ, and NY.

Overview of CLE Topics (Agenda)

Today's roadmap (1 Hour)



Part One — Foundations

Religious liberty as a principled, cross-tradition commitment; why religious diversity creates unique lawyering challenges



Part Two — Corporate & Transactional Counseling

Religious organizations as distinct clients; governance/polity (avoid projection); entity formation and tax-exempt status; IRC § 170(b)(1)(A)(i) church status and integrated auxiliaries



Part Three — Litigation & Religious Liberty Counseling

First Amendment & RFRA basics; employment disputes as case study



Part Four — Toolkit

Religiously literate counseling; common assumption traps; intake checklist; professional responsibility guideposts

PART ONE: FOUNDATIONS

Catholic Teaching on Religious Liberty

A Foundation for Consistent Advocacy

Second Vatican Council

Religious freedom is grounded in human dignity, not relativism. **“Nemo cogatur, nemo impediatur”** — let no one be forced; let no one be prevented
(*Dignitatis Humanae*, § 2, 1965)

Pope St. John Paul II

Religious freedom is the cornerstone of all human rights; the state may not impose belief
(*Message for World Day of Peace*, 1988)

Pope Benedict XVI, Message for World Day of Peace, “Religious Freedom, the Path to Peace” (Jan. 1, 2011)

Religious freedom is a fundamental human right and a path to peace; it rejects both religious extremism and secularism that confine religion to private life
(*Message for World Day of Peace*, 2011)

Pope Francis, Address on Religious Freedom and Global Clash of Values (June 20, 2024)

Warned against reducing religious freedom to mere freedom of worship; insisted on public and institutional dimensions
(*Address on Religious Freedom and Global Clash of Values*, 2024)

Core Principle: Religious liberty is a natural right rooted in the dignity of the human person

Shared Christian Consensus on Religious Liberty

Across Traditions (selected denominational statements)

Orthodox

Human dignity (and therefore authentic freedom) is grounded in the image and likeness of God, not individual autonomy alone.

Source: Russian Orthodox Church, Basic Teaching on Human Dignity, Freedom and Rights (2008), §I

Lutheran (LCMS)

God alone binds the conscience through His Word; civil authority has a distinct vocation and must not coerce faith or administer the Gospel.

Source: LCMS Commission on Theology and Church Relations (CTCR), Render Unto Caesar... And Unto God: A Lutheran View of Church and State (1995)

Southern Baptist

God alone is Lord of the conscience; church and state should be separate; the state has no right to impose penalties for religious opinions.

Source: Southern Baptist Convention, The Baptist Faith and Message (2000), Article XVII

Evangelical

Religious freedom as God-given, universal human right; necessary for authentic evangelism.

Source: National Association of Evangelicals, "For the Health of the Nation"

Shared consensus: Faith loses moral meaning when compelled; civil peace requires protecting conscience across deep differences

Why This Topic Matters for Faith-Driven Lawyers

The United States Is Religiously Diverse—and Rapidly Changing

- The United States is one of the most religiously diverse nations in the world, and religious pluralism is now a structural feature of American legal practice.
- Lawyers increasingly serve clients whose religious commitments differ significantly from their own.

Religion Shapes Clients' Worldviews and Legal Objectives

- Religion functions as a comprehensive worldview, shaping how clients understand authority, obligation, risk, conscience, and moral responsibility.

This Creates Distinct Professional Obligations

- Learning about the client's faith—and, in the case of an organization, its internal dynamics—in role.
- Understanding whether and how the client's faith informs and impacts the matter and its resolution.
- Communicating across religious difference (or similarity).
- Tailored goal-setting and problem-solving, for both ends and means.

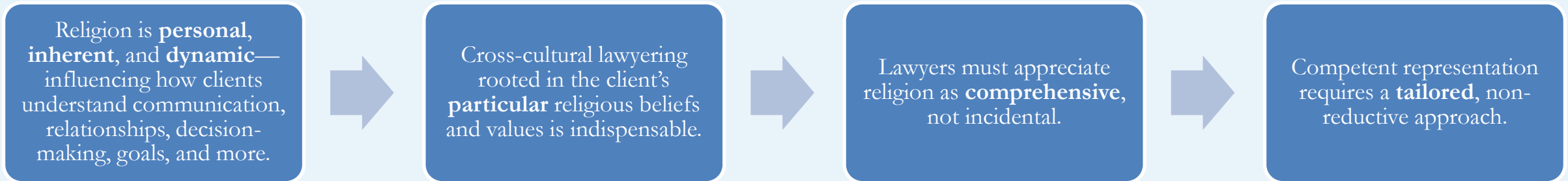
Particular Responsibility of Faith-Driven Lawyers

- Lawyers of faith have a distinct opportunity—and ethical duty—to represent clients of all faiths with competence, diligence, and respect.

Religion as a Cross-Cultural Factor in Legal Representation

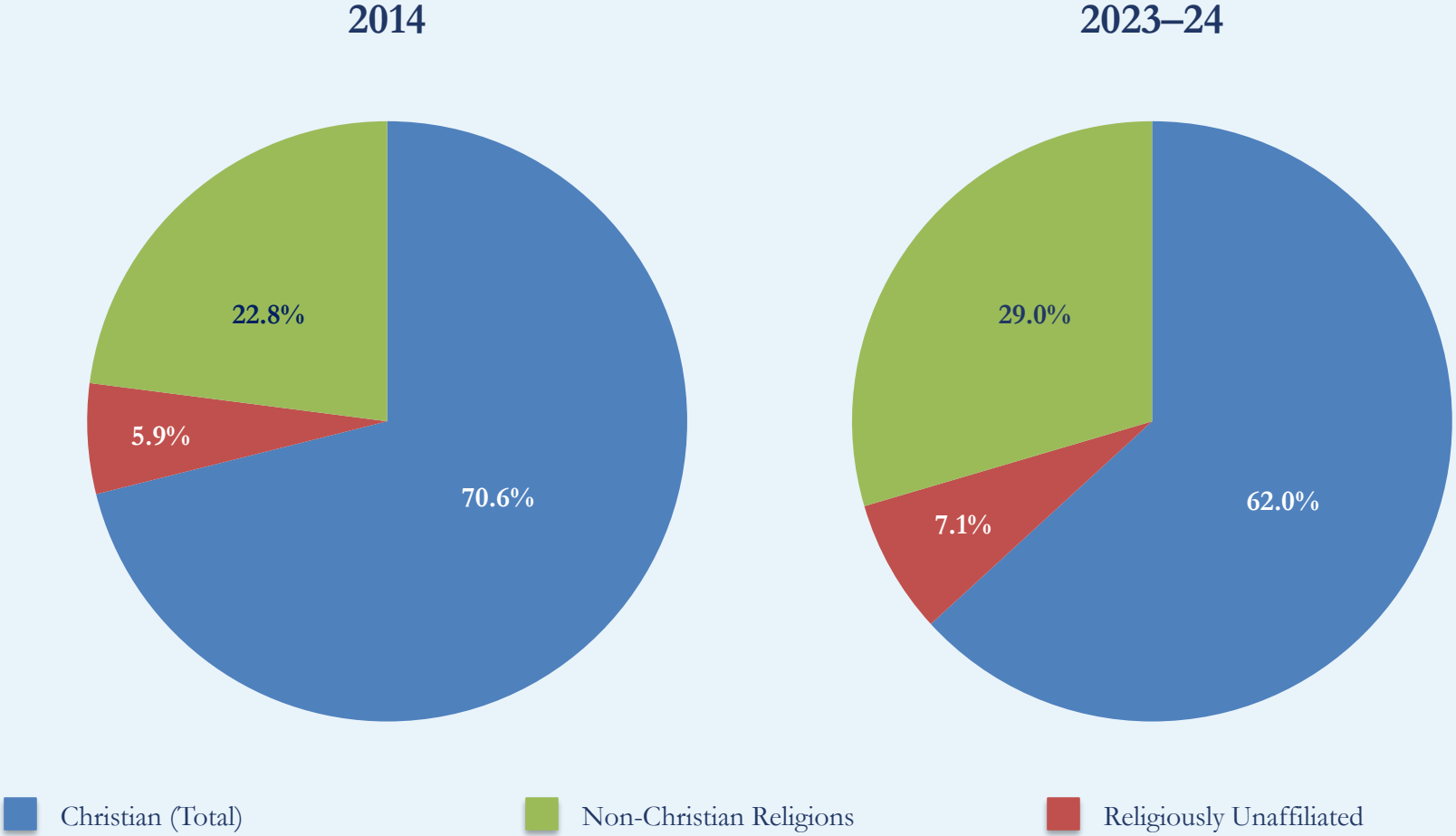
Religion functions as a comprehensive worldview that shapes identity, authority, obligation, and moral reasoning

“Because religion is the lens through which many, if not most, people understand the world, its impact on the law and its practice is inevitable and must be appreciated — even if we see it differently.” — Prof. Sonne



“All lawyering is cross-cultural.” — Professors Bryant & Koh Peters

The U.S. Religious Landscape — A Snapshot



Source: Pew Research Center, Religious Landscape Study (2014; 2023-24)

Key Demographic Takeaways

What These Numbers Mean for Lawyers

- **Christianity** remains predominant but **no longer represents a supermajority** in U.S. religious affiliation
- Religious pluralism and non-affiliation are now **structural features** of the legal landscape, not marginal phenomena
- Every major Christian tradition has **declined as a share** since 2014, even where absolute numbers stabilized
- **Bottom line:** These shifts underscore why religious literacy and religiously literate counseling are increasingly relevant

PART TWO: CORPORATE & TRANSACTIONAL COUNSELING

The “Dual Personality” of Religious Organizations

Religious organizations exist simultaneously as communities of faith and as civil legal entities



- The **religious community** is primary – a body of believers defined by shared doctrine, worship, and mission
- The **legal entity** is instrumental – a civil structure used to hold property, employ staff, and interact with the state
- Confusion arises when lawyers treat the legal entity as **constitutive of the church**, rather than as a tool serving a broader religious reality.
- Competent representation requires maintaining this **dual perspective**, recognizing when civil law governs and when civil law must defer to religious self-understanding

Diverse Governance Structures (Polity)

Governance is a legal expression of theology

Model	Description	Examples
Congregational	Self-governing; decisions made by majority of members	Baptist churches; many nondenominational churches
Hierarchical/Episcopal	Authority flows from ecclesiastical hierarchy	Roman Catholic Church; Eastern Orthodox
Hybrid/Connectional	Shared governance between local and regional/national bodies	Presbyterian; Methodist

Source: W. Cole Durham, Jr. & Robert T. Smith (eds.), *Religious Organizations and the Law* (Thomson Reuters/West, updated annually)

Practice points:

- Treat the client’s governance structure as an expression of theological commitments rather than organizational convenience.
- Identify the governing model used by the religious community.
- Avoid projecting familiar governance assumptions based on denomination labels, personal experience, or secular nonprofit analogies.
- Determine who is authorized to speak and decide for the organization before advising, drafting documents, or initiating or resolving (pre-)litigation.

Religious Organizations as **Distinct Legal Clients**

The Client is a Religious Community; Not Merely a Legal Entity

- Religious organizations are communities of belief and practice that use legal entities as instruments to carry out a religious mission.
- Religious communities may be subject to ecclesiastical laws in addition to federal, state, and local civil laws.
- The corporation, trust, or association serves the religious community; it is not the community itself.

What the Law Protects

- The First Amendment protects religious exercise and religious identity, rather than nonprofit or charitable status as such.
- Legal doctrines governing religious organizations differ in important ways from general nonprofit law.

Why This Matters for Counsel

- Lawyers err when treat religious organizations as interchangeable with secular nonprofits or assume familiar governance models.
- Competent representation requires understanding of how theology, polity, and mission shape authority, decision-making, and legal risk.

Assumption-Driven Errors in Understanding Religious Governance

Avoiding Projection When Assessing Religious Governance

- Assuming one's own faith tradition or professional background provides a reliable template for how authority functions in other religious communities.
- Treating denomination labels or familiar institutional forms as proxies for actual decision-making authority.
- Mistaking surface similarity (*e.g.*, “church”, “congregation”, “bishop”, or “board”) for shared understanding of governance structures or accountability mechanisms.
- Overlooking internal religious law, custom, or practice.
- **Caution: Lawyers experienced with a single faith tradition (such as the Catholic Church) may misunderstand shared vocabulary or misidentify authority or decision-making when advising across traditions.**
- **Examples:**
 - Drafting bylaws for a Buddhist or Hindu temple requires sensitivity to each tradition's governance — not merely imposing a Christian hierarchical or congregational model
 - Drafting bylaws for a diocesan- or parish-affiliated organization will differ from bylaws for a religious order-affiliated organization
 - Drafting bylaws for a Benedictine-affiliated organization will differ from bylaws for a Dominican-affiliated organization

Federal Tax Classification as a Counseling Judgment

Classification Consequences and Counseling Risks

Core categories

IRC § 170(b)(1)(A)(i) covers a church or a convention/association of churches. Certain related ministries may qualify as an integrated auxiliary of a church (Treas. Reg. § 1.6033-2(h); IRS Pub. 1828).

Compliance consequence

Churches (and generally their integrated auxiliaries and associations of churches) are not required to file Form 990 (IRC § 6033; Treas. Reg. § 1.6033-2(g)).

Downstream effects

For many organizations, non-filing status is used to support exemptions from charitable solicitation registration in some states.

Cross-tradition “blind spot”

Catholic lawyers may assume “church” means dioceses, parishes, or religious orders only. Some **Evangelical parachurch ministries** also seek this status.

Illustrative examples

Church designation reported for **Focus on the Family**, **Cru**, and **Billy Graham Evangelistic Association**.

**PART THREE: CONSTITUTIONAL
BASICS, EMPLOYMENT DISPUTES, &
RELIGIOUS LIBERTY COUNSELING**

Religious Liberty, Generally: Constitutional and Statutory Frameworks

- **Establishment Clause**

- History and tradition (*Kennedy*) – see McConnell hallmarks; generally, coercion
- Applications: public schools, facilities, forums, benefits/penalties, etc.

- **Free Exercise Clause**

- *Sherbert*: denial of public benefit subject to strict scrutiny
- *Smith*: “valid and neutral law of generally applicability” – no targeting (*Masterpiece*); exceptions trigger strict scrutiny (*Fulton*)
- *Mahmoud* – religious upbringing of children

- **Additional Constitutional Dynamics**

- Church autonomy and the ministerial exception (*Hosanna-Tabor, Our Lady*)
- Minority-faith dynamics: definition of religion, ministerial status, substantial burden, etc.
- “Play in the joints” for accommodation purposes (*Amos, Cutter*)

- **Statutory Protections**

- **Religious Freedom Restoration Act (RFRA)** – substantial burden by federal government triggers strict scrutiny
- **Religious Land Use and Institutionalized Persons Act (RLUIPA)** – substantial-burden protection in prison and land use

- **State Law**

Religious Liberty, Specifically: The Workplace

- **Constitutional Protections**

- Employee in public employment – free exercise with speech/assembly overlaps (*Kennedy*)
- Employer – ministerial exception (*Our Lady*); church autonomy (*Union Gospel Mission – CA9*); F.E. & F.A.?

- **Statutory Protections**

- Employee
 - Title VII
 - Non-discrimination (*Abercombie*)
 - Reasonable accommodation of conflict between job requirement and sincerely held religious belief absent employer showing of undue hardship (*Groff*)
 - Analogous state and local laws – e.g., California’s higher hardship standard, protects practices by name
- Employer (*see Goodrich, Religious Hiring Beyond the Ministerial Exception*, 101 Notre Dame L. Rev. __ (2026))
 - Title VII exceptions for religious employers and schools over religion-based employment decisions
 - Lower-court variations on covered entities and range of religious decisions
 - BFOQ in Title VII, analogous state and local laws (narrow); RFRA?

General Dynamics of Representing Religious **Employees & Employers**

EMPLOYEE DYNAMICS

✦ **Sincerity & Identity**

Religious employees' beliefs reflect deeply held identity commitments, not mere preferences. Lawyers must let clients define them, and resist reframing/projecting.

◆ **Reasonable Accommodation**

Employees are entitled to reasonable accommodation of sincerely held religious beliefs absent showing of undue hardship. Understanding the employee's needs in resolving the conflict is key to effective representation.

★ **Client-Centered Lawyering**

Effective advocacy requires disciplined attention to how a client's particular religious beliefs or tradition frame a given obligation, identity, community, practice, or burden, with attendant faithfulness in translation.

EMPLOYER DYNAMICS

◆ **Mission-Consistent Compliance**

Religious employers must honor their faith while complying with applicable laws and honoring the dignity of all involved, mindful of their wider mission.

★ **Ministerial Exception & Religious Hiring**

The Constitution protects religious employer's authority over ministerial roles and internal governance. Statutes also offer protections for faith-based hiring.

♥ **Accommodation Without Mission Drift**

Religious employers should engage the interactive process as both a pastoral and legal exercise—ask, don't assume; document the request, options, and decision.

Advising Religious Employees, Specifically

Client-Centered Representation

- **Goal:** Protect client against religious discrimination and/or help them secure accommodation of their sincerely held religious beliefs—within the particulars of the law while maintaining fidelity to client’s faith and related commitments.
- **Three-step framework**
 - 1) **Define the need**—Let client articulate religious belief or practice in own terms, with engaged and active listening and sensitivity to cross-cultural dynamics of client, lawyer, system.
 - 2) **Map the legal landscape**—Identify applicable protections: Title VII non-discrimination or reasonable accommodation, analogous state and local laws, and First Amendment/RFRA/RLUIPA where relevant.
 - 3) **Build the record**—Document employee’s request, religious basis, alternatives explored (or lack thereof), and employer’s response, for process evaluation, cooperation demonstration, and claims preservation.
- **Scenario A (grooming):** Sikh truck-drivers’ kesh obligation conflicts with employer hair-sample drug testing. Understand the practice; frame claim around accessible themes of duty and bodily integrity; identify testing alternatives for win-win.
- **Scenario B (schedule):** Seventh-day Adventist seeks Sabbath accommodation. Establish Sabbath observance as identity-defining duty—not mere preference—with historical roots; explore all scheduling options and impacts for win-win.
- **Practice tip:** Allow client to define needs and goals, appreciating dynamic interplay of legal and cultural dynamics.

Advising Religious Employers, Specifically

Mission Alignment: Internal and External

- **Goal:** Help client honor religious identity while complying with law; treat all with dignity; keep eye on broader mission/public
- **Three-step framework:**
 - 1) **Clarify the role and/or reasons**—ministerial vs. non-ministerial; religious vs. non-religious reasons
 - 2) **Map legal obligations**—Title VII obligations; burden to explore options and hardships; state-law awareness
 - 3) **Choose mission-consistent path**—accommodate where possible; document; ADR alternatives?; charitable yet consistent
- **Scenario A (general employment):** Religious school seeks to maximize ability to make employment decisions. Review each position—written materials and practice—to determine whether it involves “important religious functions” for ministerial exception (*Our Lady*); maintain clear and consistent expectations, including reservation of rights, for religious determinations.
- **Scenario B (religious accommodation):** Employee of other faith seeks religious accommodation for attire, grooming, or time off. Assuming non-minister and employer cannot or prefers not to invoke a religious reason for refusing accommodation, review all available options, hardship implications, and neutrality implications—is there a workable accommodation?
- **Practice tip:** Treat interactive process as legal and pastoral, while documenting request, options, and decision; consistency

Determining Your Client and Managing Conflicts

Who Is the Client?



A critical threshold issue: define at the outset the **scope of representation** and who precisely is the client



The client is the **church itself, or its agencies** — not the individual officers, directors, or members who retain the attorney



If the lawyer acts on behalf of the officers, directors, or members, **ethical considerations involving conflicts of interest** may easily arise



A religious organization may not be fully represented by its legal entities. The lawyer may represent the **wider church**, not just the entity sued



These challenges are compounded when representing organizations from **unfamiliar traditions**, where internal decision-making authority differs significantly

PART FOUR: TOOLKIT

Key Ethics Rules Implicated

Model Rule

Rule 1.1 — Competence

Rule 1.2 — Scope of Representation

Rule 1.4 — Communication

Rule 1.7 — Conflict of Interest

Rule 2.1 — Advisor

Rule 8.4(g) — Misconduct

Application to Religious Diversity

Religious literacy may be required where doctrine, governance, or conscience constraints materially affect legal strategy.

Religious clients may define objectives in faith-informed terms. The lawyer may not redefine objectives based on personal discomfort.

Candid discussion required where religious commitments narrow legal options, increase risk, or affect settlement posture.

Personal opposition to client's religious beliefs can be a material limitation. Response: disclosure, consent, or declination.

Permits moral, social, and political factors in advice; does not permit dismissing religious belief as illegitimate.

Advancing religious liberty claims does not violate 8.4(g). Advocacy for religious exemptions is protected.

Common Assumption Traps

Assumption-driven errors in professional judgment when representing religious clients

- Assuming theological similarity means institutional similarity (*e.g.*, treating a Christian parachurch ministry as if it operates like a church or parish)
- Projecting one's own Christian moral framework onto a client's faith commitments, mischaracterizing authority, conscience, community, or discipline when those concepts differ
- Over-identifying with the client's religious goals and under-counseling on legal risk, compliance, or institutional consequences due to shared faith or sympathy
- Framing legal advice in implicitly Christian categories (faith practice, sin, witness, scandal, forgiveness) without confirming that those categories accurately map onto the client's tradition or decision-making process
- Assuming resistance to litigation, settlement, or compromise based on Christian instincts, rather than examining how the client's own tradition approaches conflict and resolution

Practice point: Shared faith reduces distance, not difference—faithful lawyering requires disciplined curiosity, not theological shorthand

Practical Toolkit - Reducing Assumption-Driven Errors

Practical steps



Educate yourself on the beliefs, governance, and legal needs of religious traditions in your jurisdiction.



Ask; don't assume. Inquire about internal governance, decision-making, and religious requirements.



Advocate consistently. The same Free Exercise principles that protect churches also protect mosques, temples, and synagogues.



Model civility. Many religious organizations are sensitive to professional civility and fostering peace. Zealous representation must account for this.

Client Intake Checklist

Reducing assumption-driven errors at intake (avoiding projection)



Mission Clarity

What is the religious organization's stated mission, and how does it affect legal objectives?



Non-Negotiables

What principles of religious doctrine or practice are non-negotiable for the client?



Authority to Decide

Who has authority within the organization to make legal decisions, and how does internal religious governance shape that process?



Structured Intake Questions

Replace assumptions with accurate information through disciplined inquiry and separate personal disagreement from professional judgment.

Faithful Clients, Faithful Lawyering

Responsible Representation Requires Seeing More Than Meets the Eye

- Faithful lawyering does not require sharing a client's beliefs, but it does require understanding how religious commitments shape identity, obligation, and decision-making.

Professional Fidelity Begins with Client Definition

- Lawyers must allow religious clients to define the meaning and importance of their own commitments without projection or distortion.

Competence Includes Religious Literacy

- Religious diversity is a structural feature of law practice.
- Competent representation requires disciplined inquiry into a client's tradition, governance, and non-negotiables.

Ethical Lawyering Across Deep Difference

- Faith-driven lawyers have a particular opportunity and obligation to represent clients of all traditions with diligence, respect, and professional independence, consistent with core duties of competence, loyalty, and judgment.

Closing Principle

- Responsible representation requires lawyers to honor religious liberty by representing religious clients with clarity, humility, and care.

Questions?

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References

- [1] Helen Alvaré, *Religious Freedom After the Sexual Revolution: A Catholic Guide* (CUA Press, 2022)
- [2] W. Cole Durham, Jr. & Robert T. Smith (eds.), *Religious Organizations and the Law* (Thomson Reuters) (treatise, updated annually)
- [3] James A. Sonne, *Cross-Cultural Lawyering and Religion*, 25 *Clinical L. Rev.* 223 (2018)