

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 11-309

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Complainant: No. 0120710958A

Judge: No. 0120710958B

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**ORDER**

The complainant alleged that a municipal court judge made inappropriate comments suggesting bias and personal political motivations.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

After reviewing the complaint and the judge's response, the commission decided to dismiss this matter with a private warning to the judge. The complaint is dismissed pursuant to Rules 16(b) and 23(a).

Dated: April 3, 2012.

FOR THE COMMISSION

/s/ Lawrence Winthrop

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Lawrence F. Winthrop  
Commission Vice-Chair

Copies of this order were mailed to the complainant and the judge on April 3, 2012.

*This order may not be used as a basis for disqualification of a judge.*



		date is Jan. 6 at 10 a.m. in 707. The companion cases are identical.
No more camping. Get a job.	I have a job.	
Your message has been heard. I don't know if anyone agrees with it. I must be the 1%. I don't get it.		I concur with you judge.
was released on OR.		

, at 16:33 minutes on CD

Judge		Prosecutor
Oh, another camper (with glee).		This is another one who had a matter set this morning, is represented, the motion to continue was granted, we ask for consolidation.
Granted, next hearing date is January 6, 2012, room 707, 10 a.m. Find another place to camp Send your message somewhere else What is the message? What's your message?  Oh that one, I heard that one.		Inaudible comment

, at 19:56 on CD

Judge		Prosecutor
Camping. Your message? You are the corporate guy as well?	I am part of the 99%	Yes he's the one
The Judge laughed. I don't know where those numbers come from but ...		He is a very committed and very articulate guy
I don't doubt that for one second. I question the percentage.	Just like the government says unemployment has	

	improved and half the people are not looking for jobs.	
Unless they are in jail.		In that case, everyone has a job.
What do we do for		He has no address but from 10 years ago, I would be bringing up bad things from 10 years ago so I might as well bring up a good thing. To his credit, he was arrested for shoplifting and sent to diversion and he finished it all.
He's the 1%, right, exactly. I'll enter not guilty. Do you have a place to go?	Yes	
Then OR. Camp somewhere else with the message.		

, at 27:48 on the CD

Judge		Prosecutor
Camping. Petition to revoke on four others, are there any other holds than these 5 files?	One in but I took care of that this morning. I did not make my payment because my rig?? Broke and it took three months to get a new one and now I can get back to work.	Oh man. I sympathize, he's been at Occupy Phoenix, we have not been opposing OR, in fact asking for OR but he has not been making his court dates. Look at those 34.04s.
He's at Occupy that's why.		

## VIOLATIONS

The judge violated The Code of Judicial Conduct and engaged in conduct that brought the judiciary into disrepute. Part D states that though he is a pro tem judge, he still must comply with parts 1.2 and 2.4.

The judge violated Rule 1.2 by exhibiting a lack of impartiality and impropriety or the appearance of impropriety thus decreasing public confidence in the judiciary.

RULE 1.2. Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Comment:

3. Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the rule is necessarily cast in general terms.

5. Actual improprieties include violations of law, court rules, or provisions of this code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge. An appearance of impropriety does not exist merely because a judge has previously rendered a decision on a similar issue, has a general opinion about a legal matter that relates to the case before him or her, or may have personal views that are not in harmony with the views or objectives of either party. A judge's personal and family circumstances are generally not appropriate considerations on which to presume an appearance of impropriety.

By his comments, the judge showed disrespect to the defendants who were arrested at Occupy Phoenix. In no other case did he comment on the actions of the accused or tell the accused what he should do in the future. The judge clearly knew what Occupy Phoenix was and did not agree with it. That is his right, but the bench is not the place to voice his political beliefs. Occupy Phoenix is clearly a political movement, and the accused believe they are fully within their First Amendment Rights to demonstrate, protest, petition the government with their grievances, and meet and confer for the public good. His snide remarks, tasteless jokes, admonitions to get a job or take your message somewhere else show impropriety or the appearance of impropriety and since this type of behavior was only aimed at the four Occupy Phoenix defendants, show lack of impartiality. Further, it is clear the judge does not know or does not respect the First Amendment and the Constitutional protections thereunder. This too undermines public confidence in the judiciary.

The judge violated Rule 2.4 by showing clearly that he had been and was swayed by partisan interests and public clamor and that he allowed political, perhaps financial, or other interests to influence his conduct.

RULE 2.4. External Influences on Judicial Conduct

(A) A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

**Comment**

An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

The judge has clearly violated this provision by making fun of the accused, by disrespecting them, by laughing at them, none of which he did with the other defendants, some of whom were accused of violent and despicable acts. Yet the defendants he mocked were political defendants whose message he clearly disagreed with, but who have a Constitutionally protected right to express that message. It is clear that the judge was not looking at laws or facts but at what he perceived to be the popularity of the Occupy Movement and what he personally, and perhaps those he associates with, thought of it.

**Conclusion:**

Prior to the time I stopped listening to the audio CD, \_\_\_\_\_ had handled 20 cases. These included an assault arrest with two different victims, criminal damage with the victim being his \_\_\_\_\_, assault and criminal damage with the \_\_\_\_\_ as the victims, and an assault by a man with three domestic violence convictions, and two pending, in the one at issue he beat a pregnant woman in the stomach who was at that time in the hospital with vaginal bleeding. The prosecutor asked for a \$25,000 bond because they viewed him as a threat to her life. The judge added to the life of the unborn child.

In all of these cases, the judge treated the accused with minimal respect or at least neutrality – save four – the four Occupy Phoenix accused. How is it that peaceful protesters expressing their First Amendment rights are treated worse than criminals who assault elderly mothers and pregnant women?

The Preamble to the Code of Judicial Conduct states:

Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

Judge \_\_\_\_\_ has clearly violated Rules 1.2 and 2.4 and should be removed from the bench.

Sincerely,