

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 24-427

Judge:

Complainant:

ORDER

May 8, 2025

The Complainant alleged a judicial officer improperly wore their judicial robe to a religious service.

The role of the Commission on Judicial Conduct is to impartially determine whether a judicial officer has engaged in conduct that violates the Arizona Code of Judicial Conduct or Article 6.1 of the Arizona Constitution. There must be clear and convincing evidence of such a violation in order for the Commission to take disciplinary action against a judicial officer.

The alleged conduct in this matter occurred in 2023 and 2024, before the Judicial Ethics Advisory Committee issued a formal written opinion concluding that such conduct is improper and based at least in part on previously issued informal guidance concluding that it was not. The JEAC's formal opinion was subsequently withdrawn by the Arizona Supreme Court, the ultimate arbiter of judicial ethics and conduct in the state, leaving a lack of ethics guidance on this particular issue. The Commission reviewed all relevant available information and concluded that there was not clear and convincing evidence of ethical misconduct in this matter. The complaint is therefore dismissed pursuant to Commission Rules 16(a) and 23(a).

Commission member Roger D. Barton did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on May 8, 2025.

Arizona Commission on Judicial Ethics
1501 W. Washington St. Suite 229
Phoenix, AZ 850078

Complaint regarding judges wearing judicial robes at the

Dear Commission,

is a non-profit organization incorporated under Arizona and Federal law. Its purpose is to protect the constitutional principle of separation between church and state. We have received numerous comments and are concerned about the judges who attended and participated in the in

FACTS

The held at and sponsored by a religious organization, is held to coincide with the opening of the legislature or a term of court – in this case it was so it was for the opening of the legislature - clearly a political event. If you go to the webpage below, you'll see photos of , and along with Judge and another judge in robes acting in religious roles. The event seems to have a photo of as well. Thus there is no factual question at issue.

In an earlier advisory in which the found it was improper to wear a rainbow flag on a robe. They pointed out that the rule “ While judges are free to express their religious beliefs under the First Amendment, a robe is the uniform

of judicial office, and they are not free to put that government imprimatur on a certain religion.

In the 18-03 decision, the referenced Rules 2.3 Bias, Prejudice, and Harassment including based on religion. The decision said no matter how worthy the cause, the judicial robe cannot be a platform for communicating the judge's personal beliefs or extrajudicial activities. That is clearly what occurred in the yet these judges were just given a pass or should I say blessing.

So as it stands today, judges may not use their robes to make a statement against discrimination (e.g. to support lesbians and gays) but they make use their robes to make a statement in favor of discrimination (by the . This is a violation of the First Amendment, the Rule of Law, precedent, and sound judicial reasoning.

In particularly the judges have violated the Arizona Code of Judicial Conduct violations as follows:

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."

Rule 1.3 Avoid Abuse of the Prestige of Judicial Office: "A judge shall not abuse the prestige of judicial office to advance the personal ... interests of the judge...."

Rule 3.1 Extrajudicial Activities in General: "A judge may engage in extrajudicial activities However, when engaging in extrajudicial activities, a judge shall not: (C) participate in activities that would appear to a reasonable person to undermine the judge's independence ... or impartiality....;(E) make use of court ... equipment [such as judicial robes], except for activities that concern the law, the legal system, or the administration of justice"

Rule 3.7 Participation in ... Religious ... Activities authorizes participation in religious activities, including using one's title; however, it does not authorize wearing judicial robes while so participating.

LEGAL PRINCIPLES

The appearance of impartiality as well as actual impartiality is very important for a court, especially the state's highest court. *Brown, Matter of*, 691 N.E.2d 573, 427 Mass. 146 (Mass. 1998) The robe is a signifier of a position from judges (*Nadeau* and *Yengo infra*) to the Ku Klux Klan (*Church of the Ku Klux Klan v. Kerik*, 356 F.3d 197 (2nd Cir. 2004)) to the Pope (symbolizing the instruments of the Christ's passion).

Judges can appear and speak about societal issues. (*Griffen v. Ark. Judicial Discipline Com'n*, 130 S.W.3d 524, 355 Ark. 38 (Ark. 2003)) was not only a judge on the state court of appeals but an He spoke at the against the firing of a coach that he and others viewed as racist. But he appeared in his own capacity, as an past president of the and past board member of the He disclosed those facts at the outset of his remarks and indicated that he was appearing on his own behalf. He did not wear his robe.

The court had no trouble finding that judicial independence is a compelling interest of the State and a fundamental principle. The court also pointed out that a judge can never divest from being a judge. Once installed into office, a judge never sheds the judicial role so long as s/he remains in office. Thus when speaking or acting outside that role, the speaker or actor must be exceptionally clear that s/he is not representing the court. Arizona, like every other state, has a compelling interest in the reality and appearance of an impartial judiciary. (*Wolfson v. Concannon*, 750 F.3d 1145 (9th Cir. 2014))

A recent case in Texas brings into stark relief the issue of religious belief. (*Hensley v. State Commission on Judicial Conduct*, 22-1145 (Tex. Jun 28, 2024)) The justice of the peace refused to perform weddings for same sex couples allegedly because of her religious beliefs. She was issued a public warning by the State Commission. She sued under the religious freedom act and the state constitution free speech clause. The lower court dismissed the case on procedural grounds because she failed to exhaust administrative remedies, but the higher court reinstated the case and sent it back. As of briefing was still occurring.

Another state court judge in Texas filed suit against the Texas Commission on Judicial Conduct, under 42 U.S.C. § 1983. (*Jenevein v. Willing*, 493 F.3d 551 (5th Cir. 2007)) This case held all the suspense of a good television show – bribery, sex, press conferences in robes, shuffling paid work to his wife, and personal use of taxpayer equipment. The judge's First Amendment argument was ignored by the Judicial Commission, so he filed a 42 U.S.C. §1983 claim. The Commission won in the district court, and the judge appealed. The lower court decision was affirmed in part and reversed and remanded in part.

The appeals court said that Judge was an elected official but also an employee of the state which makes the relationship more complicated. The court looked to government's regulation of an elected official's speech to his constituency, requiring such regulations to be narrowly tailored to address a compelling government interest. The court started with the premise that the state has a compelling interest in protecting the integrity of its judiciary. But the state could not shut down completely all communication between the Judge and his constituents.

However, that is not the case here as neither _____ nor _____ who were at the _____ in robes were elected. Both were appointed. Only _____ is now up for a retention election on _____

However, the court in *Jenevein* said that the censure order survives strict scrutiny to the extent that it is directed at Judge Jenevein's use of the trappings of judicial office to boost his message particularly while wearing his judicial robe. The state has a compelling interest in preserving the integrity of the courtroom, and judicial use of the robe that symbolically sets aside the judge's individuality and passions. Each judge can have their individuality and passions, but not while wearing the robe. The court agreed with the *Griffin* case that while holding office the judge is always a judge.

Here, both _____ and _____ sought to boost their message of piety by using the trappings of judicial office i.e. wearing the robes. They may be as pious as they like; but as state employees, they may not send that message from the government.

According to the court in *In re Nadeau*, 2016 ME 116, 144 A.3d 1161 (Me. 2016), judges are the face of the judiciary, and while they are encouraged to participate in extra-judicial activities, that conduct especially when in a judicial robe reflects on the court system. The court pointed out that judges are held to higher standards of integrity and ethical conduct than attorneys or other persons not invested with the public trust. This heightened standard of conduct extends beyond the limits of the judge's courtroom. “

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The robe is important because it reminds all concerned of the fact that the judge represents the law on which liberty depends. (*Yengo, Matter of*, 371 A.2d 41, 72 N.J. 425 (N.J. 1977) But more important it is a constant reminder to the judge that judges do not have the freedom of the ordinary individual but are bound to submerge personal feelings in the impartial administration of the law. A judge may not like those restrictions, but they come with the position and are explained in advance. When a judge shows that s/he may not be impartial but have a particular adherence to some other organization or doctrine, as the two did here, public confidence is eroded.

It is true that “

” *In re Sanders*, 955 P.2d 369, 375 (Wash.1998) But the difference is whether the judge made the comments or did the activity as a private citizen or in a judicial capacity. *In re Kendall*, 55 V.I. 888 (V.I. 2011) Lawyers have a special duty to protect the integrity of the law. *Comm'n for Lawyer Discipline v. Benton*, 980 S.W.2d 425, 430 (Tex.1998) (quoting *Gentile*, 501 U.S. at 1066, 1071, 1074, 1076, See also *Black v. Blount*, 938 S.W.2d 394, 399–401 (Tenn.1996). Given that, the State has increased interest in controlling speech and action that interferes with legal integrity. The lawyer accepts that responsibility when becoming a member of the Bar. Judges are held to higher standards

than lawyers and when acting in their official capacities (wearing a robe) they are performing official government functions. (*In re Kendall supra*)

In another First Amendment case involving a judge, *In re Cohen*, 1 JD 2023 (Pa. Commw. Ct. Nov 03, 2023), the judge is arguing that the blog he had before he became a judge covers local, state, and national matters that will not come before his court and thus since he is voicing his personal opinions on those matters it is not a violation of the Canons. As of parties were filing documents in the case so there is no decision. But in the *Cohen* case, he insisted the blog is clearly from his personal point of view without any metaphorical robes on. Regardless, he lost the case. On the terminated on suspended him without pay and he will be

As the has said, public employees do not entirely lose their First Amendment rights. *Pickering v. Board of Education*, 391 U.S. 563, 88 Sup. Ct. 731 (1968) But the State has interests as an employer in regulating the speech of employees. The question is to find the balance. That balance regarding religion has been found long ago.

HISTORICAL PRECEDENT

The United States was deliberately founded so as not to be reliant on or connected to any religion. The founders all had experience in or knowledge of countries and American colonies where religious differences had torn them apart, some for hundreds of years, over doctrinal disputes. Various religions already existed in the colonies and to weld all that into one country would not only take some skillful doing but require that religion could not be the weapon that tore it all apart.

The founders themselves were religious but they had seen that the mixture of government and religion, both in the old country and the new, resulted in oppression and tyranny. The founders did not want a government that could exclude people based on religion. Many of those who fought for this provision were because they understood, as did that mixing faith and government weakens both.

In the U.S. Constitution, the only mention of religion is Article VI Section 3: ... but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

The First Amendment says: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;..." At that time, some colonies did have established religions and even taxed all citizens to support them. If someone didn't like that religion, they could be imprisoned, tortured or killed. The founders saw this and knew it was precisely not the way to create a nation. A period of disestablishment followed.

**THE COMMISSION'S POLICY IS
TO POST ONLY THE FIRST FIVE
PAGES OF ANY DISMISSED
COMPLAINT ON ITS WEBSITE.**

**FOR ACCESS TO THE
REMAINDER OF THE
COMPLAINT IN THIS MATTER,
PLEASE MAKE YOUR REQUEST
IN WRITING TO THE
COMMISSION ON JUDICIAL
CONDUCT AND REFERENCE
THE COMMISSION CASE
NUMBER IN YOUR REQUEST.**