

COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY AGAINST  
JUDGE B. LYNN WINMILL OF THE U.S. DISTRICT COURT, DISTRICT OF IDAHO

Presented by Dr. Habib Sadid  
(Total words: 1,048, excluding Code of Conduct section)

This Complaint of Judicial Misconduct against District Court Judge B. Lynn Winmill of the District of Idaho is not brought in vengeance or in anger.

This Complaint does NOT conclude that Judge Winmill, whose record from the bench is respected throughout the nation, actually engaged in judicial misconduct. I do not have the resources to draw such a conclusion.<sup>1</sup>

But this Complaint does allege that Judge Winmill's close association to Idaho State University and one of its contract attorneys, John A. Bailey Jr., who lives in the home next door to the judge, creates the appearance of impropriety as articulated in Canons 1, 2 and 3 of the Code of Conduct for United States Judges.

### **Code of Conduct**

Canon 1 of the Code of Conduct for United States Judges states that "an independent and honorable judiciary is indispensable to justice in our society." The "commentary" on this canon adds that "deference to judgments and rulings of courts depends on public confidence in the integrity and independence of judges," which in turn depends upon their "acting without fear or favor."

Canon 2 states that a judge should avoid not only impropriety, but "*the appearance of impropriety in all activities.*" Canon 2A states that a "judge should ... act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." The "commentary" on this Canon adds that "an *appearance of impropriety* occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality ... to serve as a judge is impaired. ... A judge must avoid all impropriety and *appearance of impropriety.*" [emphasis added]

Canon 2B states that "a judge should not allow family, social, political, financial, or *other relationships* to influence judicial conduct or judgment. A judge should neither ... convey or permit others to *convey the impression that they are in a special position to influence the judge.*" [emphasis added]

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1. I have alleged, in a separate complaint pending before the Idaho State Bar, that my former attorney, Ronaldo A. Coulter, who represented me in *Habib Sadid v. Arthur Vailas et al.* (2011), a case before Judge Winmill's court, violated attorney codes of ethics when he filed a frivolous defamation lawsuit against me to manipulate Judge Winmill into granting a motion from Coulter to release him as my attorney just before the case was scheduled to go to trial. Coulter's exit from the case enhanced the legal position of the defendants, who were Idaho State University administrators and who were represented by John A. Bailey Jr. Details of the ISB complaint are available upon request.

Canon 3C states that “a judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances in which (a) the judge has a personal bias or prejudice concerning a party ... .”

### **Alleged Violation**

As noted in the introduction, this Complaint does NOT allege that Judge Winmill willfully acted improperly under Canons 1, 2A and 2B, and 3C.

But his close associations to Idaho State University and one of its contract attorneys, John A. Bailey Jr., seems to meet the “appearance of impropriety” standard in at least four federal court cases, three of which involve Idaho State University.<sup>2</sup>

The appearance of impropriety also is heightened by the fact that Judge Winmill made decisions or rulings that were favorable toward the Bailey’s clients in all four cases. One of the cases is still pending before his court.

### **Statement of Facts**

The allegation of the appearance of impropriety is supported by five facts:

1. John A. Bailey Jr., an attorney for the firm of Racine Olson Nye Budge and Bailey, which has an office in Pocatello, lives at 5215 Johnny Creek Road, Pocatello, which is the home next door to Judge Winmill’s home, located at 5227 Johnny Creek Road (see Exhibits A and B).

Bailey and his law firm represented Idaho State University and/or various ISU officials in three separate lawsuits, including one brought by this Complainant. The university hired Racine et al. law firm to represent its interests in all three cases.<sup>3</sup> Bailey is listed as one of the attorneys handling the cases for the university.

I should point out that it is not unusual for a federal or state judge to know or even be friends with an attorney who has a client in a case pending before the judge. Friendship alone does not mean that a judge is incapable of rendering independent and fair decisions and rulings.

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2. *Habib Sadid v. Arthur Vailas et al.*, Case No. 4:11-cv-00103-BLW. The other two lawsuits were *Huntsinger et al. v. Idaho State University, et al.*, Case No 4:14-cv-00237, and *Idaho State University faculty Association for the Preservation of the First Amendment v. Idaho State University, et al.*, Case No. 4:12-cv-00068. The *Huntsinger* case is still pending before Judge Winmill’s court. A fourth case does not involve Idaho State University, but John A. Bailey Jr. and his law firm represented the plaintiff-appellees in *Alliance for Property Rights and Fiscal Responsibility et al., v. City of Idaho Falls and Idaho Falls Power*, Case No. 4:12-cv-00146-BLW.

3. The university disbanded its legal department about a year ago and contracted with Racine et al. to take over many of its functions, another fact that enhances the appearance of impropriety between the judge and Racine et al.

However, when the attorney lives next door to a judge, the level of concern increases. As one legal observer put it, “Who wants to live next door to a neighbor who might be angry at you for years over a decision you make?”

2. Judge Winmill earned a bachelor’s degree from ISU in 1974 (see Exhibit C-1). He also was student body president during his senior year. These affiliations, in and of themselves, are not necessarily a strong case for the appearance of impropriety.

However, for some judges, graduating from a university does pose a problem. For example, in 2009, U.S. District Court Judge Lonny R. Suko recused himself from *Demers v. Austin et al.* (2009), because the defendants were administrators at Washington State University, where Suko had earned a bachelor’s degree.

3. Judge Winmill was an adjunct professor at Idaho State University from 1991-1995 (see Exhibit C-2).
4. Judge Winmill was a member of the ISU Alumni Association Board of Directors from 2009 to 2013 (see Exhibit D). Most alumni associations are independently incorporated, but they all work closely with administrators at their affiliated institutions. In 1995, the ISU Alumni Association also gave Judge Winmill a Professional Achievement Award.
5. The ISU honorary Political Science Fraternity, Pi Sigma Alpha, awarded Judge Winmill the Statesman of the Year Award in 2000 (see Exhibit E).

### Summary

By themselves, most of the five associations between Judge B. Lynn Winmill and Idaho State University probably would not raise concerns about the independence of a judge.

However, living next door to an attorney is a far more serious concern than the other four associations, and when all five are taken together, a reasonable attorney and citizen would conclude that the appearance of impropriety exists.

The fact that Judge Winmill issues decisions and rulings that favored the clients represented by John A. Bailey Jr. and his law firm does not prove that an impropriety occurred. But, again, it heightens the perception that one might have occurred.

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