

# Judges cannot ignore law, give 'break' to less fortunate

There are times when serving as a judge is an extraordinarily trying task. This is especially so in our current tough economic times, when many people in dire financial straits are involved in litigation.

## MY TURN

Maricopa County's 25 justice

courts must handle tens of thousands of debt-collection and eviction cases a year, most resulting in displacement and/or bankruptcy for unfortunate families. Recently, a distraught woman appeared before me as a defendant in an eviction matter. Crying and nearly hysterical, she asked why the government is bailing out homeowners who can't pay their mortgage but does nothing for those who can't pay their rent. She implored me to take action to help her.

Unfortunately, the law does not permit a judge the luxury of weighing the misfortune of all those who cannot pay their rent and choosing who is worthy of "a break" and who isn't. No human



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being could accurately perform such a task. I had no authority to step into the landlord-tenant relationship and fashion a new bargain that the parties had not reached on their own accord. Nor could I grant her license to live on another's property without paying rent as required in the lease agreement.

All I could do was ensure that her legal rights were protected and refer her to a social-service relief agency to assist her in coping with the result.

Although it provided her little comfort, I explained the role of a judge in our legal system. A judge takes an oath to follow the constitution and laws and cannot create new law from the bench in an effort to reach a desired result in a particular case. Sometimes the facts are heart-wrenching and the temptation is great to muddy what the law clearly mandates. It is at such moments that a judge must remain true to the

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oath of office. To do otherwise is to assume powers that do not properly come with a seat on the bench.

For instance, when the law says that a judge "may" do something, it allows wide discretion. When it says that a judge "shall" do something, it leaves no discretion at all. And in Arizona the law does not recognize financial hardship as a defense to the non-payment of rent.

If I rewrite the law to suit my fancy in every case, I render the law meaningless and essentially make myself a legislator. If every judge acted in this way, the law would mean whatever a particular judge felt it should mean on any given day rather than what our

elected representatives intended it to mean. Such a whimsical judicial philosophy confounds the notion of equal justice for all.

When judges do not limit themselves to the written word, it creates uncertainty bordering on legal anarchy, as there would then be no reliable, consistent way for those who use our courts to measure the strength of their cases or predict outcomes. Fewer cases would reach settlement, clogging dockets that are already overcrowded. So the next time you are in court and see your local justice of the peace apologize, hesitate, sigh deeply or wince before rendering a decision, you can probably guess that the judge is humbly doing what the law requires rather than what the heart desires.

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