

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS
STATE OF WYOMING

An Inquiry Concerning)
The Honorable Ruth Neely)
Municipal Court Judge and)
Circuit Court Magistrate)
Ninth Judicial District)
Pinedale, Sublette County)

No. 2014-27

**ORDER GRANTING COMMISSION'S MOTION FOR PARTIAL SUMMARY
JUDGMENT AND DENYING JUDGE NEELY'S MOTION FOR SUMMARY
JUDGMENT**

THIS MATTER came before the Adjudicatory Panel on December 4, 2015 on the Commission for Judicial Conduct and Ethics' MOTION FOR PARTIAL SUMMARY JUDGMENT and THE HONORABLE RUTH NEELY'S NOTICE AND MOTION FOR SUMMARY JUDGMENT, and the Panel having reviewed the motions and the responses thereto, and being fully advised in the premises FINDS:

FINDINGS OF FACT

1. The Honorable Ruth Neely sits as Municipal Court Judge for the Town of Pinedale pursuant to appointment by the Town Mayor and approval of the Town Council. *Neely Deposition, pp. 14-17.*
2. She also serves as a Circuit Court Magistrate, pursuant to appointment by the Honorable Curt Haws. *Neely Deposition, pp. 17-18; Haws Deposition, pp. 123-126, Haws Deposition Exhibits 42, 38.*
3. Circuit Court Judges and Magistrates are authorized to perform weddings pursuant to W.S. §5-9-212, W.S. §20-1-106(a).
4. The primary purpose for Judge Neely's appointment as Circuit Court Magistrate is to perform civil marriage ceremonies. *Neely Deposition, pp. 39-43. Haws Deposition, p. 61.* Judge Neely performed other magistrate duties on only one occasion, in April 2009. *Neely Deposition, pp. 42-48.*
5. Judge Neely is a longtime member of the Lutheran Church – Missouri Synod and has been an active parishioner at her local congregation for the past thirty-eight years. *Neely Aff.* ¶ 21.

6. Judge Neely believes the teachings of the Bible and the doctrines of her denomination. *Neely Aff.* ¶ 22. She seeks to conform her conduct in all areas of her life to those teachings and doctrines. *Id.* One of the core tenets of her faith is that God instituted marriage as a sacred union that joins together one man and one woman. *See id.* at ¶ 23; *Rose Aff.* ¶ 4; Lutheran Church – Missouri Synod, *News and Information—Upholding Marriage: God’s Plan and Gift* (*Connelly Aff.*, Exh. 11 to *Neely’s Statement of Undisputed Facts in Support of Summary Judgment*).

7. On October 17, 2014, United States District Court Judge Scott Skavdahl rendered his decision in the case of *Guzzo v. Mead*, 2014 WL 5317797, No. 14-CV-200-SWS (D. Wyo. 2014). Following Tenth Circuit precedent, the effect of *Guzzo* was to legalize same sex marriage in the state of Wyoming.

8. In late October 2014, Judge Neely met with Judge Haws and informed him of her serious religious convictions regarding same sex marriage and that she would be unable to perform same sex ceremonies. *Haws Deposition*, pp. 81-89, *Neely Deposition*, pp. 76-77, *Neely Aff.* ¶25.

9. Judge Haws informed Judge Neely that he believed that performing these types of ceremonies was an essential function of her job. *Haws Deposition*, pp. 84. Judge Haws further advised Judge Neely that, pending further guidance on the issue, she should “keep [her] head down and [her] mouth shut.” *Haws Deposition*, pp. 81-89.

10. On or about December 5, 2014, Judge Neely returned a call to Ned Donovan, an individual who identified himself as a reporter for the Pinedale Roundup. Mr. Donovan began the conversation by asking Judge Neely if she was excited about the prospect of performing gay marriages. Judge Neely told Mr. Donovan that she was not and then proceeded to tell him about her religious beliefs and opinions regarding same sex marriage. *Neely Deposition*, pp. 82-92. Judge Neely publicly expressed her belief that marriage is between a man and a woman and because of her religious convictions, she would not apply the law.

11. On December 9, 2014, the Sublette Examiner published Mr. Donovan’s article about Judge Neely and her beliefs about marriage. Ned Donovan, *Pinedale slow to adapt to new law*, SUBLETTE EXAMINER, Dec. 9, 2014, at p. 1. (*Soto Deposition Exhibit 4*) In the article, Mr. Donovan quotes Judge Neely as making the following statements:

“I will not be able to do them....We have at least one magistrate who will do same sex marriages but I will not be able to.”

“When law and religion conflict, choices have to be made. I have not yet been asked to perform a same sex marriage,”

Id. Donovan also explained that Judge Neely’s inability to perform same sex marriages was not based upon her schedule, but on her religious beliefs. *Id.* Two days later, on December 11, 2014, the Sublette Examiner published in its online edition the same article it had run in its print edition, but with the new title Pinedale judge will not marry same-sex couples. Ned Donovan,

Pinedale Judge will not marry same sex couples, SUBLETTE EXAMINER, Dec. 11, 2014, www.subletteexaminer.com/v2_news_articles.php?heading=0&page=72&story_id=3424 (Exh. 50 to Neely's Motion for Summary Judgment).

12. Judges are required to follow and apply the law regardless of their personal beliefs and opinions about the law. When Judge Neely stated that she could not perform same sex weddings, she also stated that she would not follow the law.

PROCEDURAL HISTORY

This matter comes before the Commission on an "own motion" complaint pursuant to Rule 7(b) of the Rules Governing the Commission on Judicial Conduct and Ethics. A Copy of the Verified Complaint was provided to Judge Neely on January 12, 2015. After inquiries to Judge Neely and Judge Haws, on February 18, 2015, a duly appointed Investigatory Panel found there was reasonable cause to support a finding that Judge Neely engaged in judicial misconduct. Accordingly, disciplinary counsel was engaged and Notice of Commencement of Formal Proceedings was filed on March 3, 2015. Judge Neely filed a Verified Answer on April 27, 2015. On October 30, 2015 the Commission filed its Motion for Partial Summary Judgment and Judge Neely filed her Motion for Summary Judgment. On December 4, 2015 the Adjudicatory Panel convened and the parties presented oral argument in support of their respective Motions for Summary Judgment.

JURISDICTION

The Commission has jurisdiction pursuant to Rule 3 of the Rules Governing the Commission on Judicial Conduct and Ethics and the matter is properly before the Adjudicatory Panel on cross motions for summary judgment.

STANDARD OF REVIEW

The Standard of Review is well defined by Wyoming case law:

Summary judgment is proper only when there are no genuine issues of material fact, and the prevailing party is entitled to judgment as a matter of law..... *Uinta County v. Pennington*, 2012 WY 129, ¶ 11, 286 P.3d 138, 141-42 (Wyo.2012). ... The party requesting summary judgment bears the initial burden of establishing a prima facie case that no genuine issue of material fact exists and that summary judgment should be granted as a matter of law. W.R.C.P. 56(c); *Throckmartin v. Century 21 Top Realty*, 2010 WY 23, ¶ 12, 226 P.3d 793, 798 (Wyo.2010). ... Once a prima facie showing is made, the burden shifts to the party opposing the motion to present evidence showing that there are genuine issues of material fact. *Boehm v. Cody Cntry. Chamber of Commerce*, 748 P.2d 704, 710 (Wyo.1987) (citing *England v. Simmons*, 728 P.2d 1137, 1140-41 (Wyo.1986)). The party opposing the motion must present specific facts; relying on conclusory statements or mere opinion will not satisfy that burden, nor will relying solely upon allegations and pleadings. *Boehm*, 748 P.2d at 710. However, the facts presented are considered from the vantage point most favorable to the party opposing the motion, and

that party is given the benefit of all favorable inferences that may fairly be drawn from the record. *Caballo Coal Co.*, ¶ 12, 246 P.3d at 871.

Amos v. Lincoln Cnty. Sch. Dist. No. 2, __ P.3d __, 2015 WY 115, ¶15 (Wyo. Aug. 21, 2015).

CONCLUSIONS OF LAW

Applying this standard to the factual findings above, the Panel reaches the following legal conclusions:

1. Wyoming law recognizes same sex marriage.
2. Solemnization of matrimony is a judicial function.
3. Judge Neely's statements violated the Wyoming Code of Judicial Conduct

ANALYSIS

A. Applicable sections of the Wyoming Code of Judicial Conduct

Judge Neely violated **Rule 1.1**, which states: "A Judge shall comply with the law, including the Code of Judicial Conduct." Judge Neely violated Rule 1.1 by stating her unwillingness to follow Wyoming law (perform same sex weddings), thus undermining the integrity of the judiciary.

Judge Neely violated **Rule 1.2**, which states:

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

Citizens have no right to ignore the laws because of their religious convictions. Judges are subjected to an even higher standard. Judges set the example of respect and adherence to the rule of law. Judges must support the law, not undermine it. Even the appearance of impropriety suggests to other citizens that the law may be rejected and disobeyed, justified by subjective beliefs or desires. Here, Judge Neely announced she would not follow the law because of her religious convictions regarding same sex marriage. By announcing her position against same sex marriage and her decision not to perform said marriages, she has given the impression to the public that judges, sworn to uphold the law, may refuse to follow the law of the land. She has also suggested by her statements that other citizens may follow her lead. A judge announcing her decision to pick and choose the law she wishes to follow undermines her position and our system of justice.

Judge Neely violated **Rule 2.2**, which states:

A Judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Judge Neely's statement that she could not perform same sex marriages indicates she is not fair with respect to that particular judicial function. The Judge must perform her duties fairly and impartially. Comment 2 to this Rule states:

[2] Although each judge comes to the bench with a unique background and personal philosophy, a Judge must interpret and apply the law without regard to whether the Judge approves or disapproves of the law in question.

Judge Neely's primary duty as a magistrate was the performance of marriages. Following *Guzzo*, the law of Wyoming allowed same sex couples to be married. Judge Neely expressed her unwillingness to perform same sex marriages, demonstrating her inability to act impartially with respect to the law.

Judge Neely violated **Rule 2.3**, which states:

(B) A Judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment including, but not limited to bias, prejudice or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, **sexual orientation**, marital status, socio-economic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the Judge's direction and control to do so...(emphasis added).

Regardless of the basis of Judge Neely's opinion regarding same sex marriage (her honestly held religious belief) her expression of her inability to perform same sex marriages, manifested a bias with respect to sexual orientation. Bias and prejudice, which causes a judge to announce that she will not follow the law, is antithetical to the important role of judges in our democracy.

B. Constitutional Considerations

Free Exercise of Religion

"[A] law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531 (1993). Both the law under *Guzzo* and the enforcement of the Wyoming Code of Judicial Conduct are facially neutral and of general applicability. Enforcement of the Code of Judicial Conduct is rationally related to the State's interest in upholding the rule of law, and such enforcement ensures that the judiciary is not brought into disrepute, preserves the independence, impartiality and fairness of the judiciary and promotes public confidence in the judiciary.

Judge Neely has a right to pursue her religious beliefs freely. Nevertheless, she is also a judge. A judge is required to apply and follow the law of the land irrespective of religious beliefs. Religious beliefs do not allow an individual to refuse to comply with an otherwise valid law. *See id.*

Religious Test

“[I]ssuing a marriage license to a same-sex couple merely signifies that the couple has met the *legal requirements* to marry. It is not a sign of religious or moral approval.” *Miller v. Davis*, -- F.Supp.3d.--, 2015 WL 4866729, No. 15-44-DLB, at *13 (E.D.Ky. 2015), *stay denied*, 136 S.Ct. 23 (2015) (emphasis in original). Wyoming is not requiring Judge Neely to pass a religious test in order to perform her job as a judge. Irrespective of religion, a judge must apply and follow the law.

Judge Neely argues that Article I, Section 18 of the Wyoming Constitution shields her acts because it provides that “no person shall be rendered incompetent to hold any office of trust...because of his opinion on any matter of religious belief whatever.” WYO. CONST. art. I, § 18. Judge Neely’s opinion on same sex marriage does not render her incompetent to perform as a judge. It is her inability to apply and follow the law that renders her incompetent to perform as a judge.

Establishment Clause

The Establishment Clause forbids a state from “prefer[ing] one religion over another.” *Everson v. Bd. Of Educ. Of Ewing Twp.*, 330 U.S. 1, 15 (1947). Here, application of the Wyoming Code of Judicial Conduct has nothing to do with religion. Indeed, irrespective of religion or reason or belief or otherwise, a refusal to follow the law renders a judge incompetent.

Freedom of Expression/First Amendment

The First Amendment limits the States’ ability to abridge individuals’ freedom of speech. U.S. CONST. amend. I. Likewise, the Wyoming Constitution guarantees that “[e]very person may freely speak, write and publish on all subjects.” WYO. CONST. art. 1, § 20.

“‘The government may not constitutionally compel persons to relinquish their First Amendment rights as a condition of public employment,’ but it does have ‘a freer hand in regulating the speech of its employees than it has in regulating the speech of the public at large.’” *Miller*, 2014 WL 2866729, at * 13 (quoting *Connick v. Myers*, 461 U.S. 138, 156 (1983); *Waters v. Churchill*, 511 U.S. 661, 671 (1994)). “When a citizen enters government service, the citizen necessarily must accept certain limitations on his or her freedom.” *Garcetti v. Cabellos*, 547 U.S. 410, 418 (1951).

Judge Neely is not being punished for expressing her views on same sex marriage. Because she was not speaking as a private citizen on matters of public concern, Judge Neely’s speech was not entitled to First Amendment protections. *Id.* at 421. In Wyoming, same sex marriage may be solemnized in a civil court by a judge. A judge’s announcement that she will not follow the law, in her capacity as a **judge**, is not protected speech.

Even, assuming that Judge Neely was speaking in her capacity as a private citizen (an argument which the Commission expressly rejects), the Commission finds that the State has “adequate justification for treating [her] differently from any other member of the general

public.” *Id.* Whether her religious views are in favor or against same sex marriage, as a judge she is required to apply and follow the law and to give the public confidence in her ability to follow the law.

Due Process

Because the entire commission on judicial ethics and conduct will ultimately decide this matter, any complaint of bias is not well taken. Six lay persons, three attorneys, and three Wyoming judges - as varied in age, background, religious preference, gender, as Wyoming can muster, deciding this matter after providing a full and fair opportunity for the presentation of evidence and legal argument, hardly passes as a violation of due process of law. There has been no showing of bias or prejudice in the decision making of the Investigative Panel or Adjudicatory Panel or in the selection of the various panel members. No one person of the twelve people identified above is a singular decision maker. The decision here is by a majority. And no showing has been made that even one of the twelve has been shown to be prejudiced to the point of an intolerably high risk of unfairness. *See Riggins v. Goodman*, 572 F.3d 1101 (10th Cir. 2009).


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ORDER

WHEREFORE, after considering the written briefing, the evidence submitted by the parties, and the oral arguments presented by the parties' respective counsel, this Panel finds that there are no genuine issues of material fact as to any of the claims asserted in the Notice of Commencement of Formal Proceedings filed by the Commission on Judicial Conduct and Ethics, and that the Commission is entitled to summary judgment as a matter of law. This Panel further finds that sufficient evidence exists to determine appropriate discipline without further hearing in this matter.

IT IS HEREBY ORDERED THAT Judge Neely's Motion for Summary Judgment is **DENIED** in its entirety, the Commission's Motion for Partial Summary Judgment is **GRANTED** in its entirety. The matter is hereby referred to the full Commission on Judicial Conduct and Ethics for further disposition pursuant to the Rules Governing the Commission on Judicial Conduct and Ethics.

SO ORDERED this ^{December 31st} ~~January~~ 31st day of ~~January~~, 2015.


Mel C. Orchard, III
Presiding Officer/Hearing Officer


Barbara H. Dilts
Hearing Officer


Hon. Wendy M. Bartlett
Hearing Officer

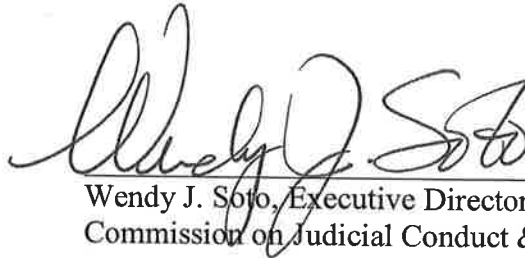
CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of December, 2015, I served the foregoing ORDER GRANTING COMMISSION'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND DENYING JUDGE NEELY'S MOTION FOR SUMMARY JUDGMENT via email and by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

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A handwritten signature in black ink, appearing to read "Wendy J. Soto", is written over a horizontal line.

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cc: Adjudicatory Panel