

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS

STATE OF WYOMING

An inquiry concerning	)	
The Honorable Ruth Neely	)	No. 2014-27
Municipal Court Judge and	)	
Circuit Court Magistrate	)	
Ninth Judicial District	)	
Pinedale, Sublette County	)	

**CJCE'S ANSWER TO INTERROGATORIES**

COMES NOW the Commission on Judicial Conduct and Ethics, by and through its attorney Patrick Dixon, and answers Judge Neely's Interrogatories as follows. This response is in accordance with the Wyoming Rules of Civil Procedure and the standards of practice in Wyoming, and not necessarily any instruction or definition propounded by counsel.

**GENERAL OBJECTION:** The Commission objects to the Judge's Interrogatories *in toto* on the grounds that Rule 22(a) of the Rules Governing the Commission on Judicial Conduct and Ethics provides, in material part:

*(a) Proceedings* - Unless otherwise permitted by these rules, or unless revealed in public documents or a public hearing, all proceedings before the Commission and all information, communications, materials, papers, files, and transcripts, written or oral, received or developed by the Commission in the course of its work, shall be confidential. No member of the Commission or its staff and no employee or agent of the Commission, disciplinary counsel and disciplinary counsel's staff, no attorney, and no testifying witness shall disclose such proceeding, information, communications, materials, papers, files, or transcripts, except in the course of official duty or as otherwise authorized by these rules. Any violation of the provision for confidentiality shall constitute an act of contempt and be punishable as such.

Subject to this objection, the Commission responds as follows:

**INTERROGATORY NO. 1:** Describe in detail what actions, omissions, beliefs, or statements attributable to Judge Neely justify the Commission's conclusion in

Paragraph B(2) of its Notice that "Judge Neely's stated position with respect to same sex marriage precludes her from discharging the obligations of the above-cited Canons and Rules of Judicial Conduct, not just with respect to the performance of marriage ceremonies, but with respect to her general duties as Municipal Court Judge."

**ANSWER:** The following statements made by or attributed to Judge Neely justify the allegations set forth in Paragraph B(2) of the Notice:

From the December 11, 2014 Sublette Examiner Article:

"I will not be able to do them," referring to same sex marriages.

"When law and religion conflict, choices have to be made."

From Judge Neely's February 7, 2015 response to the Commission on Judicial Conduct and Ethics:

"My conscience, formed by my religious convictions, will not allow me to solemnize the marriage of two men or two women were I ever asked to do so."

"And as I explained in my letter to the Committee, my inability to solemnize the marriage same sex unions does not arise from any prejudice or bias against people, but rather from my sincerely held religious beliefs about marriage."

"But my religious convictions will not allow me to officiate at same sex ceremonies."

*Additional Statements made to Ned Donovan and not published:*

"There's [sic] legal issues in life, and there's moral issues in life and they don't always match. So for me my moral issues supersede the legal issues and so I'm not saying it's wrong because legally it's correct, legally it's right, but morally I'm not able to."

"I am required to do them because I am a [circuit court] magistrate."

"Gently, I would like people not to know that I can't do them. I would gently direct them to Steve Smith, I would gently tell them I'm not available that day."

These statements, made both publicly and privately demonstrate a willingness on the part of Judge Neely to subordinate the law of the land to her own individual religious beliefs. Whether or not Judge Neely believes that she is prejudiced or biased against the LGBT community, these statements evidence the opposite. At a minimum, they create a perception of partiality, bias and arbitrariness.

**INTERROGATORY NO. 2:** Describe in detail how the actions, omissions, beliefs, or statements alleged in response to Interrogatory 1 constitute a violation of the Wyoming Code of Judicial Conduct Canon 1 and supply all facts in support of that conclusion.

**ANSWER:** As it applies to Judge Neely's actions and comments described in the preceding response, the key terms in Canon 1 are "impartiality" and "impropriety and the appearance of impropriety." Whether or not based upon religious convictions, Judge Neely's words and actions demonstrate a lack of impartiality toward a segment of our society. That a judicial officer would perform her duties for the benefit of one class of person and not another goes beyond the appearance of impropriety.

Judge Neely chose to make her feelings on this matter openly public in a newspaper of local circulation. A reasonable member of society could easily conclude that if Judge Neely is unwilling to recognize and accept the legally established rights of LGBT individuals as it relates to marriage, she may also be less than impartial in the application of the law and upholding the other legal rights of LGBT individuals in other proceedings before her which are unrelated to marriage. This appearance of partiality and impropriety exists even if Judge Neely elects not to perform any other judicial functions as a magistrate and carries over to her position as a municipal judge.

**INTERROGATORY NO. 3:** Describe in detail how the actions, omissions, beliefs, or statements alleged in response to Interrogatory 1 constitute a violation of the Wyoming Code of Judicial Conduct Canon 1.1 and supply all facts in support of that conclusion.

**ANSWER:** Judge Skavdahl's ruling in the United States District Court of *Guzzo v. Mead*, 2014 WL 5317797 (D.Wyo.2014), subsequently affirmed by the United States Supreme Court is that all persons, regardless of sexual orientation are entitled to the same right to be married. The Commission understands that Judge Neely's sole reason for appointment as Circuit Court Magistrate is to perform marriage ceremonies. The fact that Judge Neely is unwilling to perform ceremonies for one class of individuals while remaining willing to perform marriage ceremonies for another class demonstrates a selective application or interpretation of the law. Moreover Rule 2.3 prohibits a Judge in the performance of her judicial duties from manifesting a bias or prejudice based upon sexual orientation. This Rule makes no exception for members of the Missouri Synod of the Lutheran church. Judge Neely's words and actions clearly demonstrate bias or prejudice towards members of the LGBT community.

As previously stated, reasonable members of society can conclude that if Judge Neely is unwilling to recognize and accept the established legal rights of LGBT individuals as it relates to marriage, she may also less than impartial in the application of the law and upholding the other legal rights of LGBT individuals in other proceedings before her which are unrelated to marriage, including her rulings and application of the law in her position as a municipal judge.

**INTERROGATORY NO. 4:** Describe in detail how the actions, omissions, beliefs, or statements alleged in response to Interrogatory 1 constitute a violation of the Wyoming Code of Judicial Conduct Canon 1.2 and supply all facts in support of that conclusion.

**ANSWER:** See the Commission's answer to the preceding interrogatories. Rule 1.2 is an amplification of Canon 1.

**INTERROGATORY NO. 5:** Describe in detail how the actions, omissions, beliefs, or statements alleged in response to Interrogatory 1 constitute a violation of the Wyoming Code of Judicial Conduct Canon 2 and supply all facts in support of that conclusion.

**ANSWER:** See the Commission's answer to the preceding interrogatories. Again, the key term in Canon 2, as applied here is impartiality. Judge Neely's statements demonstrate a lack of impartiality toward the LGBT community. Rule 2.1 dictates that a judge's personal and extrajudicial activities subordinate to her judicial duties. In this case Judge Neely has given precedence to her religious beliefs.

**INTERROGATORY NO. 6:** Describe in detail how the actions, omissions, beliefs, or statements alleged in response to Interrogatory 1 constitute a violation of the Wyoming Code of Judicial Conduct Canon 2.2 and supply all facts in support of that conclusion.

**ANSWER:** See the Commission's answer to the preceding interrogatories. This Rule speaks to the performance of "all duties" not just those the Judge elects to or feels comfortable in performing.

**INTERROGATORY NO. 7:** Describe in detail how the actions, omissions, beliefs, or statements alleged in response to Interrogatory 1 constitute a violation of the Wyoming Code of Judicial Conduct Canon 2.3 and supply all facts in support of that conclusion.

**ANSWER:** See the Commission's answer to the preceding interrogatories. Rule 2.3(c) specifically prohibits a judge from showing bias or prejudice based upon sexual orientation.

**INTERROGATORY NO. 8:** Identify each form of discipline that the Commission plans to seek or believes is warranted by the allegations in the Notice or in response to Interrogatories Nos. 1 through 7, and for each form of discipline identified, state the basis for the Commission's belief that it is warranted in this proceeding.

**ANSWER:** The Investigatory Panel of the Commission has made no decision with respect to the appropriate form of discipline. That is the function of the Adjudicatory Panel and after a finding of misconduct, by the full Commission. However, the Investigatory Panel has authorized counsel to enter into a stipulated disciplinary agreement whereby Judge Neely resigns from all judicial offices. This proposal has been rejected by Judge Neely. In the meantime, counsel for the Commission will recommend to the Adjudicatory Panel, if a finding of misconduct is made, that findings and recommendations be forwarded to the Wyoming Supreme Court calling for a public censure and removal from all judicial offices. Counsel believes that this recommendation is warranted because (1) Judge Neely's words and actions demonstrate an unwillingness to perform her duties impartially, (2) a willingness to disregard the rulings of a higher court, (3) bias or prejudice against a class of individuals, (4) because of the public nature of Judge Neely's comments, and (5) because Judge Neely had been specifically directed by her supervising Judge that her opinions were not judicially appropriate and not to make them known publicly. In this regard, factors (C), (D), (E) and (F), as set forth in Rule 8(d)(2) are implicated.

**INTERROGATORY NO. 9:** Identify the members of the Investigatory Panel in this proceeding.



**ANSWER:** The members of the Investigatory Panel are as follows: Kerstin Connolly, Presiding Officer, Karen Hayes, Leslie Petersen, Jay Gilbertz and the Honorable Wade E. Waldrip. When the matter initiated, Julie Tiedeken was a member of the Investigatory Panel. However, her term expired in March, 2015 and she was replaced by Mr. Gilbertz.

**INTERROGATORY NO. 10:** Identify and describe in detail all government interests that would be served by removing Judge Neely from her circuit magistrate position, as sought by the Commission in this proceeding, and explain in detail how removing Judge Neely from that position would serve each identified government interest.

**ANSWER:** The public interests to be served are clearly outlined by the Canons of Judicial Ethics, and following Rules as outlined in Paragraph B.1 of the Notice. The comments to each respective Canon or Rule amplify the public interests and are incorporated herein. Counsel believes, and will argue to the Adjudicatory Panel that any sanction that does not include complete removal from judicial office will have the effect of condoning Judge Neely's words and conduct, and will cast the Wyoming judiciary and judicial disciplinary system in disrepute will tarnish the reputation of the State of Wyoming as the Equality State.

There is a compelling state and societal interest in a fair and impartial judiciary that applies and honors the Rule of Law which affords all members of society, regardless of standing or condition the same application of law as other members of society. This is a foundation of the legal system of the United States of America and the State of Wyoming. This interest is embodied by the Cannons of Judicial Conduct which require impartiality and prohibit bias both in fact and by conduct that lends itself to the appearance of partiality or bias.

**INTERROGATORY NO. 11:** Identify and describe in detail all government interests that would be served by removing Judge Neely from her municipal town judge position, as sought by the Commission in this proceeding, and explain in detail how removing Judge Neely from that position would serve each identified government interest.

**ANSWER:** See the Commission's answer to the preceding interrogatories. Having publicly stated a discriminatory attitude toward the LGBT community, it appears that Judge Neely cannot impartially pass judgment on civil or criminal matters that come before her on the Municipal Bench. Whether or not that is, in fact true, that will certainly be the perception held by a portion of society as a result of Judge Neely's publicly expressed position on these issues.

**INTERROGATORY NO. 12:** Identify by name, address, and telephone number all persons with knowledge of any facts asserted in the Notice and all persons likely to have discoverable information about those facts, and with respect to each identified person, describe the facts or subjects of which he or she has, or likely has, knowledge.

**ANSWER:** In addition to those persons identified in the Commission's Rule 11 disclosure statement, the following persons have knowledge and/or discoverable information:

Please see the Commission's Rule 11 Disclosures and Supplemental Disclosures.

**INTERROGATORY NO. 13:** Identify by name, address, and telephone number all persons with whom the Commission or any of its representatives or agents have



communicated about the subject matter of this proceeding or the allegations in the Notice; for each person identified, provide the date of each communication with that person, the identify of all persons involved in each referenced communication, the place and mode of each referenced communication, and a summary of the information communicated.

**ANSWER:** This interrogatory is objected to as calling for the disclosure of attorney work product. Without waiving the objection, the Commission's Executive Director, Wendy Soto, communicated with Ana Cuprill at a Christmas party in mid-December regarding the newspaper articles in Sublette County. The Commission has communicated in writing with Judge Neely and Judge Haws, which written communications are produced in response to Request for Production of Documents. Some time around March 1, Ms. Soto spoke by phone with Kurt Twitty, an investigator with the Washington Commission. She did not discuss the instant complaint but asked for general information on the ethical implications of same sex marriage. Any other communication with any witness or potential witness has been oral, done by counsel, or by Ms. Soto at the direction of counsel. The Commission objects to the disclosure of the latter communications on the grounds of attorney work product.

**INTERROGATORY NO. 14:** Describe in detail how the Commission learned about the conversation between Ned Donovan and Judge Neely that is referenced in Paragraphs A(4) and (5) of the Notice; as part of that description, include the date on which the Commission's representatives or agents first became aware of that conversation, and identify the source of that information.

**ANSWER:** Some time between December 11, 2014 and December 22, 2014, Wendy Soto hosted a Christmas party at her home. Ana Cuprill was a guest at the party.

During conversation, Ms. Cuprill informed Ms. Soto of the newspaper articles which had appeared in Sublette County and expressed or intimated her belief that this was improper on the part of a judicial officer. Ms. Soto then requested that Ms. Cuprill document the conversation at the Christmas party with an email, which email has been produced in response to Request for Production of Documents. The email attached one of the newspaper articles. Thereafter, of course, the Commission made inquiries to both Judge Neely and Judge Haws.

**INTERROGATORY NO. 15:** Describe in detail the contents of all communications between any of the Commission's representatives or agents and Ned Donovan or any other individual alleged to have knowledge of the conversation between Ned Donovan and Judge Neely that is referenced in Paragraphs A(4) and (5) of the Notice, identify all persons involved in those communications, and provide the place and mode of those communications.

**ANSWER:** This is objected to as calling for attorney work product. Without waiving the objection, Judge Neely is directed to the Commission's Supplemental Rule 11 Disclosures and response to Request for Production No. 5.

**INTERROGATORY NO. 16:** Identify and describe in detail every instance since the ruling in *Guzzo v. Mead*, 2014 WL 5317797 (D.Wyo.2014), when a same-sex couple in Wyoming could not access a state judge, judicial official, or magistrate willing to perform their wedding ceremony.

**ANSWER:** This interrogatory is objected to as not being reasonably calculated to lead to the discovery of admissible evidence. Without waiving the objection, the

Commission has no information one way or the other whether a same sex couple has been unable to access an official to perform a wedding ceremony.

**INTERROGATORY NO. 17:** Identify and describe in detail all complaints alleging sexual-orientation discrimination that have been filed with the Commission; include in that description an explanation of the allegations, the investigation, and the final disposition by the Commission or the Wyoming Supreme Court.

**ANSWER:** This interrogatory is objected to as calling for confidential information, as being unduly burdensome and oppressive, and as not being reasonably calculated to lead to the discovery of admissible evidence. Without waiving the objection, there have been no such complaints since June 1, 2012. It is conceivable that such complaints have been made in the past, however, it would be unreasonably burdensome to require the Commission to review every record generated since its inception in order to respond to this Interrogatory, particularly where the Commission would be precluded from responding per Rule 22.

**INTERROGATORY NO. 18:** Identify all persons that the Commission anticipates calling as a witness in the hearing in this proceeding, and provide a summary of each person's anticipated testimony.

**ANSWER:** No determination has been made as to who will be called as a witness. Counsel should anticipate that any individual disclosed in the Commission's Rule 11 disclosures, or in response to these Interrogatories may be called as a witness.

**INTERROGATORY NO. 19:** Identify every person consulted concerning the preparation of answers to these Interrogatories and the accompanying Request for

Production of Documents and Requests for Admission; for each person identified, describe his or her relationship to the Commission and the subject matter of the communication.

**ANSWER:** In addition to counsel and his staff, Wendy Soto, Kerstin Connolly, presiding officer of the I-Panel and Jay Gilbertz, panel member assisted in the preparation of these answers.

**INTERROGATORY NO. 20:** For each Request for Admission that is denied, describe in detail the reason for the denial and all facts and details supporting the denial.

**ANSWER:** Please see each specific response to the Requests for Admission.

**INTERROGATORY NO. 21:** Identify and describe each and every fact that the Commission believes tends to refute or undermine the responses or affirmative defenses in Judge Neely's Answer.

**ANSWER:** Please see the Commission's response to Interrogatories 1-7. The Canons of Judicial Ethics make no exception or exemption for members of the Missouri Synod of the Lutheran Church, or any other religious faith for that matter. Neither is counsel aware of any legal ruling that holds that a judicial officer's constitutional rights trump her obligation to perform her official duties impartially, apply the law of the jurisdiction and refrain from discriminatory actions or conduct directed at a class of individuals.

