

Christian Judge's Objection Prompts Ohio Supreme Court's Board to Tell All Judges to Perform Gay Marriages

A Toledo judge who cited his religious faith in declining to perform same-sex marriages has agreed to follow an advisory body's decision that he—and all judges in Ohio—must do so to remain impartial. “I will abide by that opinion. In other words, I will perform same-sex marriages if requested,” Judge C. Allen McConnell told an NBC affiliate in Toledo on Monday. As The Daily Signal reported last month, McConnell had said his religious beliefs prevented him from officiating at the civil marriage of two women in Toledo Municipal Court. After a delay of about 45 minutes, they were married by another judge. McConnell, 71, issued an apology to the women and said he had asked for guidance from the Ohio Supreme Court's Board of Professional Conduct and would go along with it. “The opinion is that I am not excluded from performing same-sex marriages —or any marriages,” McConnell, a Christian, told WNWO-TV (NBC 24) in a phone interview. “A judge who performs civil marriages may not refuse to perform same-sex marriages while continuing to perform opposite-sex marriages, based upon his or her personal, moral, and religious beliefs, acts contrary to the judicial oath of office,” the board said in its seven-page advisory ethics opinion, adding:

A judge who takes the position that he or she will discontinue performing all marriages, in order to avoid marrying same-sex couples based on his or her personal, moral, or religious beliefs, may be interpreted as manifesting an improper bias or prejudice toward a particular class.

The 28-member board based the nonbinding advisory opinion, finalized Friday, on what it considered applicable rules and its own Judicial Code of Conduct. McConnell initially acted in the wake of the U.S. Supreme Court's 5-4 ruling legalizing same-sex marriage across the nation. Athens County Municipal Judge William Grim, president of the Association of Municipal and County Judges of Ohio, also asked the board for an advisory opinion, the Toledo Blade reported. Readers shared The Daily Signal's July 9 report on McConnell more than 139,000 times on Facebook and left more than 600 comments in support or opposition to the judge's stand based on his "personal and Christian beliefs." The Daily Signal reported that McConnell, a coal miner's son who became a prosecutor and Toledo City Council member after getting his law degree, had credited the civil rights movement of the 1950s and 1960s with inspiring his career. He also is an elder at First Church of God. But Nick Komives, executive director of the LGBT rights group Equality Toledo, had demanded that McConnell step down if he would not join together two men or two women. Komives had a different reaction to the news that the judge would do as the board instructed. "I'm definitely thankful to him that he will fulfill the duties of his position and perform marriages for all couples that came before him," Komives told the NBC affiliate. The LGBT activist noted the board's opinion also specified that judges may not refuse to perform all civil marriages to avoid same-sex marriages. (McConnell had said in a prepared statement that he was willing to "continue to perform traditional marriages.") McConnell's position raised legitimate questions about his impartiality in any other legal proceeding involving a same-sex couple, the board wrote. And a judge, it said, "should be cognizant of the impact a decision to decline to perform all civil marriage ceremonies has on the public's perception of the judiciary." Caleb Dalton, litigation counsel with Alliance Defending Freedom, a Christian legal group that champions religious liberty, criticized the opinion after reading it. "Judges in Ohio have always had discretion when deciding whether to perform

marriage ceremonies,” Dalton told The Daily Signal in an email, adding:

The board’s opinion departs from that long-established practice by requiring judges to preside over marriages that conflict with their religious beliefs. But the Constitution does not permit such intolerance against judges with sincere convictions about marriage.

As The Daily Signal first reported, McConnell’s fellow municipal judges had decided to resolve the situation by having Presiding Judge Michelle Wagner officiate at all civil weddings at the courthouse. In her absence, an acting presiding judge would do so. The judges decided Monday to return to their previous rotation arrangement in which each judge handled all civil marriages for set periods, the Toledo Blade reported. “Advisory opinions of the Board of Professional Conduct are informal, nonbinding opinions in response to prospective or hypothetical questions,” a note at the end of the opinion says. The opinion may be found here. *This report has been modified by **The Daily Signal**, where it originally appeared.*