

**BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS**

**STATE OF WYOMING**

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

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**CERTIFIED RECORD  
VOLUME 1**

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**COMMISSION ON JUDICIAL CONDUCT AND ETHICS**  
**P.O. Box 2645**  
**Cheyenne, Wyoming 82003**

*Attorney Members:*  
Jay Gilbertz  
Mel C. Orchard III, Vice Chair  
Scott E. Ortiz



*Citizen Members:*  
Kerstin Connolly, Chair  
Barbara H. Dilts  
Mary Flitner  
Karen Hayes  
Donna Cay Heinz  
Leslie Petersen

*Judge Members:*  
Wendy M. Bartlett  
Wade E. Waldrip  
Norman E. Young

Wendy J. Soto  
Executive Director  
Telephone: 307-778-7792  
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Website: <http://judicialconduct.wyo.gov>

March 2, 2015

Kerstin Connolly, Chairman  
Commission on Judicial Conduct and Ethics  
501 Running W Drive  
Gillette, WY 82718

Re: In the Matter of Circuit Court Magistrate/Municipal Court Judge,  
Ruth Neely, Pinedale, Sublette County, Ninth Judicial District  
CJCE 2014-27 Referral for Formal Proceedings - Own Motion Investigation

Dear Kerstin:

In accordance with Rule 7(g) of the *Rules Governing the Commission on Judicial Conduct and Ethics*, the Investigatory Panel is referring the file in this matter to an Adjudicatory Panel for institution of formal proceedings. The Adjudicatory Panel members at this time are:

Mel Orchard, Presiding Officer and Hearing Officer  
Barbara Dilts  
Hon. Wendy Bartlett

This matter came before the Commission on its own motion and based on a newspaper article published in the Sublette Examiner. The matter was assigned to an Investigatory Panel on December 22, 2014. The Investigatory Panel unanimously voted to send an inquiry to Judge Neely, providing a copy of the article to the judge. Upon receipt of Judge Neely's

answer to its inquiry, the Investigatory Panel conferred by conference call on February 18, 2015, and found reasonable cause to believe judicial misconduct occurred based on evidence of a violation of the canons of the Wyoming Code of Judicial Conduct. The Investigatory Panel determined the conduct of Judge Neely constitutes judicial misconduct by violation of the following canons of the Wyoming Code of Judicial Conduct:

Canon 1. A Judge Shall Uphold the Integrity and Independence of the Judiciary.

Rule 1.1. Compliance with the Law.

Rule 1.2. Promoting Confidence in the Judiciary.

Canon 2. A judge shall perform the duties of judicial office impartially, competently, and diligently.

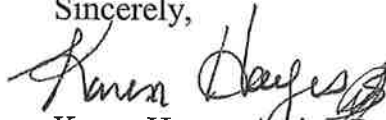
Rule 2.2. Impartiality and Fairness.

Rule 2.3. Bias, Prejudice and Harassment.

The Investigatory Panel voted unanimously to refer the matter to an Adjudicatory Panel for formal proceedings. Pat Dixon, Casper, was retained by the Investigatory Panel as disciplinary counsel to prepare and prosecute formal charges in connection with this investigation.

Disciplinary counsel will prepare a written Notice of Commencement of Formal Proceedings in this matter.

Sincerely,



Karen Hayes, Acting Presiding Officer  
Investigatory Panel

cc: Investigatory Panel  
Adjudicatory Panel  
Disciplinary Counsel

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 )

COMMISSION ON JUDICIAL CONDUCT  
AND ETHICS  
No. 2014-27  
Official Record  
FILED  
Date: March 4, 2015  
Wendy J. Soto  
Wendy J. Soto

**NOTICE OF COMMENCEMENT OF FORMAL PROCEEDINGS**

To: Honorable Ruth Neely  
Municipal Court Judge  
City of Pinedale  
P.O. Box 1386  
Pinedale, Wyoming 82941

WHEREAS, this matter came before the Investigatory Panel on its own motion pursuant to Rule 7(b) of the Rules Governing the Commission on Judicial Conduct and Ethics, and based on a newspaper article published in the Sublette Examiner quoting Judge Neely;

WHEREAS, said own motion matter was reviewed by the Investigatory Panel; and

WHEREAS, an inquiry was made with Judge Neely regarding this matter at which time Judge Neely was provided with a copy of the newspaper article; and

WHEREAS, the Investigatory Panel determined that there is reasonable cause to believe Judge Neely engaged in judicial misconduct; and

WHEREAS, the Investigatory Panel has referred the matter to an Adjudicatory Panel of the CJCE for the institution of formal proceedings in accordance with Rule 8(g) of the Rules Governing the Commission on Judicial Conduct and Ethics.

NOTICE IS HEREBY GIVEN pursuant to Rule 8(a) of the Rules Governing the Commission on Judicial Conduct and Ethics that Disciplinary Counsel's Investigation of said verified complaint would appear to establish the following:

A. *Factual Background.*

1. Judge Ruth Neely is a Municipal Court Judge, presiding over the Municipal Court of the Town of Pinedale, Wyoming. Judge Neely holds her position pursuant to the provisions of Wyoming Statutes § 5-6-101, *et seq.*, and Chapter 23 of the Municipal Code of the Town of Pinedale. Judge Neely has served as a Municipal Judge for approximately 21 years.

2. In 2001 Judge Neely was appointed Magistrate by then Circuit Court Judge John Crow. The purpose of this appointment was to confer authority upon Judge Neely to perform marriage ceremonies in accordance with Wyoming Statute § 20-1-106. Upon his appointment to the bench, Circuit Court Judge Curt A. Haws continued Judge Neely's appointment in the same capacity. Since her appointment in 2001, Judge Neely has performed numerous civil marriage ceremonies in her capacity as Circuit Court Magistrate.

3. On October 17, 2014, in the case of *Guzzo v. Mead*, 2014 WL 5317797 (D.Wyo.2014), the United States District Court for the District of

Wyoming, following established Tenth Circuit Court of Appeals precedence, determined that same sex couples enjoyed the same constitutional right to participate in civil marriage as heterosexual couples. Judge Skavdahl's ruling was not appealed and became the law of the state of Wyoming the following Monday, October 20, 2014.

4. Sometime during the week of December 8, 2014, Judge Neely was contacted by Ned Donovan, a reporter for the local papers in Sublette County, Wyoming. Judge Neely participated in an interview, or at least a conversation with Donovan on the subject of same sex marriage. During the course of the conversation or the interview, Judge Neely informed Donovan that she would be unable to perform same sex marriages as a result of her religious beliefs. Judge Neely was quoted by Donovan as saying "When law and religion conflict, choices have to be made. I have not yet been asked to perform a same sex marriage."

5. The substance of Judge Neely's conversation or interview with Donovan, including the quoted language appeared in the Sublette Examiner on December 11, 2014 and may have appeared in other local publications in that timeframe.

6. As a result of these publications and conversations with Judge Neely, Judge Haws suspended Judge Neely's authority to perform marriage ceremonies on or about January 15, 2015.

7. In the meantime, Judge Neely, with the advice of Judge Haws, voluntarily refrained from performing marriage ceremonies for any couples,

heterosexual or otherwise, and the last marriage ceremony performed by Judge Neely occurred on December 13, 2014.

8. In response to inquiries from this Commission, Judge Neely has admitted to making the comments attributed to her in the newspaper article and has reiterated her position with respect to same sex marriages, citing her religious beliefs and her First Amendment rights, presumably to the free exercise of religion.

B. *Code of Judicial Conduct.*

1. The following provisions of the Wyoming Code of Judicial Conduct are implicated by the facts recited above:

**Canon 1. A Judge Shall Uphold the Integrity and Independence of the Judiciary.**

A judge shall uphold and promote the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

**Rule 1.1. Compliance with the Law.**

A judge shall comply with the law, including the Code of Judicial Conduct.

**Rule 1.2. Promoting Confidence in the Judiciary.**

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

**Canon 2. A judge shall perform the duties of judicial office.**

A judge shall perform the duties of judicial office impartially, competently, and diligently.

**Rule 2.2. Impartiality and Fairness.**

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

**Rule 2.3. Bias, Prejudice and Harassment.**

(A) A judge shall perform the duties of judicial office, including administrative duties without bias or prejudice.

(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, socioeconomic status, or political affiliation, and shall not prevent court staff, court officials, or others subject to the judge's direction and control to do so. (Emphasis added.)

2. 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.

C. *Notification of Members of Adjudicatory Panel.*

1. The following are members of the Adjudicatory Panel: Mel Orchard, Presiding Officer, Honorable Wendy Bartlett and Barbara Dilts.

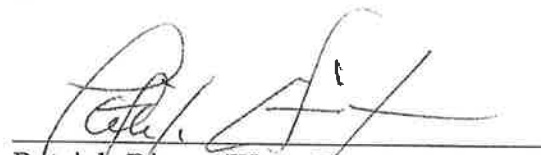
D. *Advisement.*

1. Pursuant to Rule 8(b) of the Rules Governing the Commission on Judicial Conduct and Ethics, Judge Neely is hereby advised that she shall have twenty (20) days from the date of service of the instant *Notice of Commencement of Formal Proceedings* within which to file a written, verified answer to the



allegations above made. Her response, if any, should be served on the undersigned counsel for the CJCE.

DATED this 4<sup>th</sup> day of March, 2015.



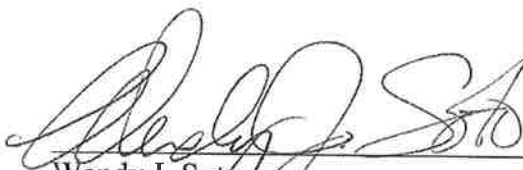
Patrick Dixon (Wyo. Bar #5-1504)  
104 S. Wolcott, Suite 600  
Casper, Wyoming 82601  
(307) 234-7321  
(307) 234-0677 (facsimile)  
Disciplinary Counsel

## CERTIFICATE OF SERVICE

I hereby certify that on the 4<sup>th</sup> day of March, 2015, I served the foregoing **NOTICE OF COMMENCEMENT OF FORMAL PROCEEDINGS** by placing a true and correct copy thereof in the United States Mail, certified mail, postage prepaid, and properly addressed to the following:

Hon. Ruth Neely  
Municipal Court Judge  
City of Pinedale  
PO Box 1386  
Pinedale WY 82941

Patrick Dixon, Esq., Chair  
Dixon & Dixon, LLP  
104 South Wolcott Street, Suite 600  
Casper, WY 82601



---

Wendy J. Soto  
Executive Director  
Commission on Judicial Conduct & Ethics  
P.O. Box 2645  
Cheyenne, WY 82003  
Phone: (307) 778-7792

COMMISSION ON JUDICIAL CONDUCT

AND ETHICS

Official Record

P.O. Box 1386

Pinedale, WY 82941

FILED

Date: 3/16/15

Wendy J. Soto

March 11, 2015

TO: Wendy J. Soto  
Executive Director  
Commission on Judicial Conduct and Ethics  
P.O. Box 2645  
Cheyenne, WY 82003

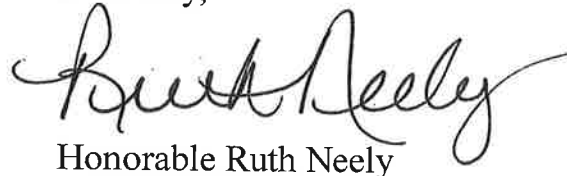
RECEIVED  
3/16/15

RE: Request for extension of time

Dear Ms. Soto,

I received the Notice of Commencement of Formal Proceedings by certified mail on March 9<sup>th</sup>. I have decided to seek counsel to help me prepare my response to the Notice and to help represent me throughout these proceedings. With that in mind, I am writing to request a short extension until April 30 to file my response so that I may find an attorney and so that he or she can then get caught up on the proceedings and prepare my response.

Sincerely,



Honorable Ruth Neely

cc: Patrick Dixon, Esq., Disciplinary Counsel

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 )

COMMISSION ON JUDICIAL CONDUCT  
AND ETHICS

No. 2014-~~2~~ Official Record

FILED

Date: 3/25/15

Wendy J. Soto

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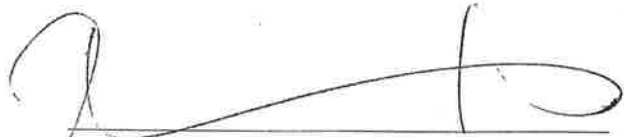
ORDER GRANTING MOTION FOR EXTENSION OF TIME TO  
ANSWER

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**THIS MATTER** having come before the Adjudicatory Panel upon the letter motion for an extension of time filed by the Honorable Ruth Neely, on March 16, 2015, and it appearing there is good cause, it is hereby **ORDERED**:

The Honorable Ruth Neely shall have until April 30, 2015, to file an answer to the *Notice of Commencement of Formal Proceedings* in this matter.

DATED this 23<sup>rd</sup> day of March, 2015.



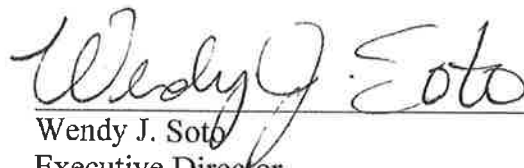
Melvin C. Orchard, III  
Presiding Officer/Hearing Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the 25<sup>th</sup> day of March, 2015, I served the foregoing **ORDER GRANTING MOTION FOR EXTENSION OF TIME TO ANSWER** by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

Hon. Ruth Neely  
Circuit Court Magistrate  
Municipal Court Judge, Pinedale  
PO Box 1386  
Pinedale WY 82941

Patrick Dixon, Esq.  
Dixon & Dixon, LLP  
104 South Wolcott, Suite 600  
Casper WY 82601



Wendy J. Soto  
Executive Director  
Commission on Judicial Conduct & Ethics  
P.O. Box 2645  
Cheyenne, WY 82003  
Phone: (307) 778-7792

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS

STATE OF WYOMING

An inquiry concerning	)	COMMISSION ON JUDICIAL CONDUCT
	)	AND ETHICS
The Honorable Ruth Neely	)	No. 2014-27
	)	COMMISSION ON JUDICIAL CONDUCT
Municipal Court Judge and	)	AND ETHICS
Circuit Court Magistrate	)	Official Record
Ninth Judicial District	)	FILED
Pinedale, Sublette County	)	Date: 4/28/15

*Wendy J. Soto*  
 Wendy J. Soto

**ENTRY OF APPEARANCE**

**COMES NOW** Herbert K. Doby, Attorney at Law, and enters his appearance as local counsel on behalf of The Honorable Ruth Neely.

**DATED** this 27<sup>th</sup> day of April, 2015.

*Herbert K. Doby*  
 \_\_\_\_\_  
 Herbert K. Doby  
 WSB# 5-2252  
 Attorney and Local Counsel for  
 Honorable Ruth Neely  
 P.O. Box 130  
 Torrington, Wyoming 82240  
 307-532-2700 Fax: 307-532-2706

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27th day of April, 2015, I served the foregoing ENTRY OF APPEARANCE by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

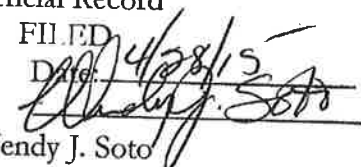
Wendy J. Soto  
 Executive Director  
 Commission on Judicial Conduct & Ethics  
 P.O. Box 2645  
 Cheyenne, WY 82003  
 Phone: 307-778-7792

Patrick Dixon, Esq.  
 Dixon & Dixon, LLP  
 104 South Wolcott Street, Suite 600  
 Casper, WY 82601

*Herbert K. Doby*  
 \_\_\_\_\_  
 Herbert K. Doby

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS

STATE OF WYOMING

An inquiry concerning	)	COMMISSION ON JUDICIAL CONDUCT
	)	AND ETHICS
The Honorable Ruth Neely	)	COMMISSION ON JUDICIAL CONDUCT
	)	No. 2014-27
	)	AND ETHICS
Municipal Court Judge and	)	Official Record
Circuit Court Magistrate	)	FILED
Ninth Judicial District	)	Date: 4/28/15
Pinedale, Sublette County	)	
		Wendy J. Soto

**MOTION TO APPEAR PRO HAC VICE**


**COMES NOW** Herbert K. Doby, local counsel for the Honorable Ruth Neely herein, and respectfully requests that, pursuant to Rule 104, U.R.D.C., Kenneth J. Connelly, Esq.; Douglas G. Wardlow, Esq.; and James A. Campbell, Esq. be admitted *pro hac vice* to represent the Honorable Ruth Neely in the above-captioned matter. In support, Herbert K. Doby shows the Wyoming Commission on Judicial Conduct and Ethics as follows:

1. Herbert K. Doby has filed his Entry of Appearance herein as local counsel on behalf of the Honorable Ruth Neely.
2. Kenneth J. Connelly, Douglas G. Wardlow and James A. Campbell are applicants for admission *pro hac vice* and all are in compliance with Rule 8 of the Rules Governing the Wyoming State Bar and the Authorized Practice of Law as indicated by the three (3) Certificates of Compliance With Rule 8 attached hereto and incorporated herein.
3. Kenneth J. Connelly, Douglas G. Wardlow and James A. Campbell are in compliance with all Wyoming rules governing this motion for their admission and appearance *pro hac vice*.

**WHEREFORE**, the undersigned local counsel respectfully requests that the Commission on Judicial Conduct and Ethics enter its order allowing the admission and appearance *pro hac*

vice of Kenneth J. Connelly, Esq.; Douglas G. Wardlow, Esq.; and James A. Campbell, Esq.; and that the Commission grant such other and further relief as is just and appropriate.

**DATED** this 27<sup>th</sup> day of April, 2015.

  
\_\_\_\_\_  
Herbert K. Doby  
WSB# 5-2252  
Attorney and Local Counsel for the  
Honorable Ruth Neely  
P.O. Box 130  
Torrington, Wyoming 82240  
307-532-2700 Fax: 307-532-2706  
dobyLaw@embarqmail.com

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27th day of April, 2015, I served the foregoing MOTION TO APPEAR PRO HAC VICE by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

Wendy J. Soto  
Executive Director  
Commission on Judicial Conduct & Ethics  
P.O. Box 2645  
Cheyenne, WY 82003  
Phone: 307-778-7792

Patrick Dixon, Esq.  
Dixon & Dixon, LLP  
104 South Wolcott Street, Suite 600  
Casper, WY 82601

  
\_\_\_\_\_  
Herbert K. Doby



**CERTIFICATE OF COMPLIANCE  
WITH RULE 8**

Mr. Kenneth John Connelly  
Alliance Defending Freedom  
15100 N. 90th Street  
Scottsdale, AZ 85260

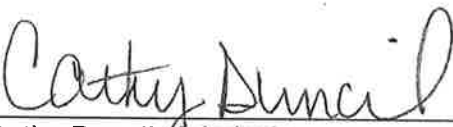
RE: In the Matter of Circuit Court Magistrate/Municipal Court Judge Ruth Neely

Case Number: 2014-27, Commission on Judicial Conduct and Ethics

The above captioned attorney has submitted an Application for Admission Pro Hac Vice to the Wyoming State Bar, along with supporting documentation showing the attorney's eligibility for admission. This attorney is compliant with Rule 8 of the Rules Governing the Wyoming State Bar and the Authorized Practice of Law.

The above attorney has associated with the following local counsel, who is an active member of the Wyoming State Bar:

**Herbert Doby      5-2252**  
**Attorney at Law**  
**P.O. Box 130**  
**Torrington, WY 82240-0130**

  
\_\_\_\_\_  
Cathy Duncil, Admissions Director  
Dated: April 9, 2015

**CERTIFICATE OF COMPLIANCE  
WITH RULE 8**

Mr. Douglas Gary Wardlow  
Alliance Defending Freedom  
15100 N. 90th Street  
Scottsdale, AZ 85260

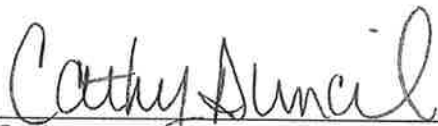
RE: In the Matter of Circuit Court Magistrate/Municipal Court Judge Ruth Neely

Case Number: 2014-27, Commission on Judicial Conduct and Ethics

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The above attorney has associated with the following local counsel, who is an active member of the Wyoming State Bar:

**Herbert Doby      5-2252**  
**Attorney at Law**  
**P.O. Box 130**  
**Torrington, WY 82240-0130**



Cathy Duncif, Admissions Director  
Dated: April 9, 2015

**CERTIFICATE OF COMPLIANCE  
WITH RULE 8**

Mr. James Andrew Campbell  
Alliance Defending Freedom  
15100 N. 90th Street  
Scottsdale, AZ 85260

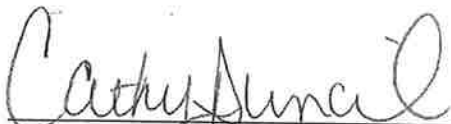
RE: In the Matter of Circuit Court Magistrate/Municipal Court Judge Ruth Neely

Case Number: 2014-27, Commission on Judicial Conduct and Ethics

The above captioned attorney has submitted an Application for Admission Pro Hac Vice to the Wyoming State Bar, along with supporting documentation showing the attorney's eligibility for admission. This attorney is compliant with Rule 8 of the Rules Governing the Wyoming State Bar and the Authorized Practice of Law.

The above attorney has associated with the following local counsel, who is an active member of the Wyoming State Bar:

**Herbert Doby      5-2252**  
**Attorney at Law**  
**P.O. Box 130**  
**Torrington, WY 82240-0130**



Cathy Duncil, Admissions Director  
Dated: April 9, 2015

**BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS  
STATE OF WYOMING**

An inquiry concerning	)	COMMISSION ON JUDICIAL
	)	CONDUCT AND ETHICS
The Honorable Ruth Neely	)	
	)	No. 2014-27
Municipal Court Judge and	)	COMMISSION ON JUDICIAL CONDUCT
Circuit Court Magistrate	)	AND ETHICS
Ninth Judicial District	)	Official Record
Pinedale, Sublette County	)	FILED
	)	Date
	)	<i>Wendy J. Soto</i>
		Wendy J. Soto

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**VERIFIED ANSWER**

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The Honorable Ruth Neely, Respondent, for her Verified Answer to the Notice of Commencement of Formal Proceedings (the "Notice") filed by the Commission on Judicial Conduct and Ethics (the "Commission"), states and alleges as follows:

1. Except as expressly admitted or otherwise specifically pleaded herein, Respondent denies each and every allegation in the Notice and puts the Commission to its strict proof thereof.
2. Respondent admits the allegations contained in Section A, Paragraph 1 of the Notice.
3. With respect to the allegations contained in Section A, Paragraph 2 of the Notice:
  - a. Respondent admits that former Circuit Court Judge John Crow appointed her as a Circuit Court Magistrate with the authority to perform marriages;
  - b. Respondent admits that, upon his appointment to the bench, Circuit Court Judge Curt A. Haws appointed Respondent as a Circuit Court Magistrate;

- c. Respondent admits that since her initial appointment in or around 2001, she has performed numerous civil marriage ceremonies as a Circuit Court Magistrate; and
  - d. Respondent denies each and every remaining allegation contained in Section A, Paragraph 2.
4. With respect to the allegations contained in Section A, Paragraph 3 of the Notice:
  - a. Respondent states that the case of *Guzzo v. Mead*, 2014 WL 5317797 (D. Wyo. 2014), speaks for itself; and
  - b. Respondent states that the remaining allegations contained in Section A, Paragraph 3 do not call for a response, but to the extent that a response is deemed necessary, Respondent denies those allegations in their entirety.
5. With respect to the allegations contained in Section A, Paragraph 4 of the Notice:
  - a. Respondent admits that she was contacted by reporter Ned Donovan in December 2014;
  - b. Respondent admits that Ned Donovan made inquiries of her regarding the topic of same-sex marriage;
  - c. Respondent admits that she informed Ned Donovan that solemnizing same-sex marriages would violate her religious beliefs;
  - d. Respondent admits that she was quoted by Ned Donovan as saying: “When law and religion conflict, choices have to be made. I have not yet been asked to perform a same sex marriage”; and
  - e. Respondent denies each and every remaining allegation contained in Section A, Paragraph 4.
6. With respect to the allegations contained in Section A, Paragraph 5 of the Notice:

- a. Respondent admits that an article authored by Ned Donovan appeared in the Sublette Examiner on December 11, 2014;
  - b. Respondent admits that the article included the language that is quoted in Section A, Paragraph 4 of the Notice;
  - c. Respondent admits that similar reports may have appeared in other local publications; and
  - d. Respondent is without sufficient information to respond to the remaining allegations contained in Section A, Paragraph 5 of the Notice and therefore denies those allegations.
7. With respect to the allegations contained in Section A, Paragraph 6 of the Notice:
- a. Respondent admits that on or about January 15, 2015, Judge Haws suspended her from performing marriage ceremonies; and
  - b. Respondent denies each and every remaining allegation contained in Section A, Paragraph 6.
8. With respect to the allegations contained in Section A, Paragraph 7 of the Notice:
- a. Respondent admits that she voluntarily refrained from performing marriage ceremonies before Judge Haws suspended her from performing them;
  - b. Respondent states that the last marriage ceremony she performed occurred on December 31, 2014; and
  - c. Respondent denies each and every remaining allegation contained in Section A, Paragraph 7.
9. With respect to the allegations contained in Section A, Paragraph 8 of the Notice:

- a. Respondent admits that, in response to an inquiry from the Commission, she cited her First Amendment rights and reiterated that solemnizing same-sex marriages would violate her religious beliefs; and
  - b. Respondent denies each and every remaining allegation contained in Section A, Paragraph 8.
10. Respondent denies each and every allegation contained in Section B, Paragraph 1 of the Notice.
  11. Respondent denies each and every allegation contained in Section B, Paragraph 2 of the Notice.
  12. Section C, Paragraph 1 of the Notice does not call for a response.
  13. Section D, Paragraph 1 of the Notice does not call for a response.

**First Affirmative Defense**

The Notice fails to state a claim upon which relief can be granted.

**Second Affirmative Defense**

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B, Paragraph 1 of the Notice would, under these circumstances, violate Respondent's freedom-of-expression rights protected by the First Amendment to the United States Constitution.

**Third Affirmative Defense**

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B, Paragraph 1 of the Notice would, under these circumstances, violate Respondent's freedom-of-expression rights protected by Article 1, Section 20 of the Wyoming Constitution.

**Fourth Affirmative Defense**

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B, Paragraph 1 of the Notice would, under these circumstances, violate Respondent's right to the free exercise of religion protected by the First Amendment to the United States Constitution.

**Fifth Affirmative Defense**

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B, Paragraph 1 of the Notice would, under these circumstances, violate Respondent's right to the free exercise of religion protected by Article 1, Section 18 and Article 21, Section 25 of the Wyoming Constitution.

**Sixth Affirmative Defense**

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B, Paragraph 1 of the Notice would, under these circumstances, constitute a religious test in violation of Article VI, Clause 3 of the United States Constitution.

**Seventh Affirmative Defense**

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B, Paragraph 1 of the Notice would, under these circumstances, constitute a religious test in violation of Article 1, Section 18 and Article 21, Section 25 of the Wyoming Constitution.

**Eighth Affirmative Defense**

The provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B, Paragraph 1 of the Notice are vague and overbroad in violation of the First Amendment and the Fourteenth Amendment to the United States Constitution.



**Ninth Affirmative Defense**

The provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B, Paragraph 1 of the Notice are vague and overbroad in violation of Article 1, Sections 6, 7, and 20 of the Wyoming Constitution.

**Tenth Affirmative Defense**

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B, Paragraph 1 of the Notice would, under these circumstances, violate Respondent's right to equal protection of the law under the Fourteenth Amendment to the United States Constitution.

**Eleventh Affirmative Defense**

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B, Paragraph 1 of the Notice would, under these circumstances, violate Respondent's right to equal protection of the law under Article 1, Sections 2, 3, and 34 of the Wyoming Constitution.

**Twelfth Affirmative Defense**

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B, Paragraph 1 of the Notice would, under these circumstances, violate the Establishment Clause of the First Amendment to the United States Constitution.

**Thirteenth Affirmative Defense**

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B, Paragraph 1 of the Notice would, under these circumstances, violate the state constitutional provisions that address the establishment of religion, including Article 1, Section 18 and Article 21, Section 25 of the Wyoming Constitution.

DATED this 27th day of April, 2015.

Respectfully Submitted,

By:



Herbert K. Doby

WSB # 5-2252

P.O. Box 130

Torrington, WY 82240

dobylaw@embarqmail.com

(307) 532-2700 Fax: (307) 532-2706

James A. Campbell\*

Kenneth J. Connelly\*

Douglas G. Wardlow\*

Alliance Defending Freedom

15100 N. 90th Street

Scottsdale, AZ 85260

jcampbell@alliancedefendingfreedom.org

kconnelly@alliancedefendingfreedom.org

dwardlow@alliancedefendingfreedom.org

(480) 444-0020 Fax: (480) 444-0028

*Attorneys for Respondent*

*\*Pro Hac Vice Applications concurrently  
filed*

**VERIFICATION OF ANSWER**

I, Ruth Neely, the undersigned, do hereby swear and affirm, under penalty of perjury, that the information contained in my Verified Answer to the Notice of Commencement of Formal Proceedings of the Commission on Judicial Conduct and Ethics is true and accurate.

Dated this 24<sup>th</sup> day of April, 2015.

Ruth Neely  
Signature

**INSTRUCTIONS TO NOTARY**

This form must be the product of an oath, not merely an acknowledgment. Before the verification is signed you must:

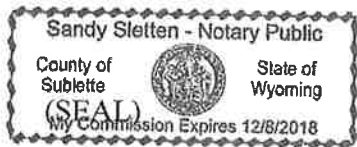
1. Place the affiant under oath;
2. Ensure that the affiant understands that all assertions are sworn to as accurate and that the affiant is subject to the penalty of perjury for any false statement; and
3. Have the verification signed in your presence.

STATE OF WYOMING )  
 )  
COUNTY OF Sublette ) ss  
 )

Subscribed and sworn to me this 24 day of April, 2015.

By Ruth Neely

[Signature]  
Notary Public



My Commission Expires: 12-8-18

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27th day of April, 2015, I served the foregoing Verified Answer by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

Wendy J. Soto  
Executive Director  
Commission on Judicial Conduct & Ethics  
P.O. Box 2645  
Cheyenne, WY 82003

Patrick Dixon, Esq.  
Dixon & Dixon, LLP  
104 South Wolcott Street, Suite 600  
Casper, WY 82601

  
Herbert K. Doby

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 )

---


ORDER GRANTING MOTION TO APPEAR PRO HAC VICE

---

THIS MATTER having come before the Commission upon the Motion to Appear Pro Hac Vice, filed April 28, 2015, by Counsel for Judge Neely, and noting no objection has been filed by Disciplinary Counsel, and having reviewed the Certificates of Compliance with Rule 8, attached to the motion, and being otherwise advised in the premises:

IT IS ORDERED Kenneth J. Connelly, Douglas G. Wardlow and James A. Campbell shall be admitted, to practice, Pro Hac Vice, for the purposes of this matter.

Dated this 10<sup>th</sup> day of June, 2015.

  
\_\_\_\_\_  
Mel C. Orchard, III  
Presiding Officer/Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of ~~May~~ <sup>June</sup>, 2015, I served the foregoing ORDER GRANTING MOTION TO APPEAR PRO HAC VICE by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

Herbert K. Doby  
P.O. Box 130  
Torrington WY 82240

Patrick Dixon, Esq.  
Dixon & Dixon, LLP  
104 South Wolcott, Suite 600  
Casper WY 82601

James A Campbell  
Kenneth J. Connelly  
Douglas G. Wardlow  
Alliance Defending Freedom  
15100 N. 90<sup>th</sup> Street  
Scottsdale AZ 85260



Wendy J. Soto, Executive Director  
Commission on Judicial Conduct & Ethics  
PO Box 2645  
Cheyenne WY 82003  
Phone: 307-778-7792

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 )

---

**HEARING ORDER**

---

A telephone scheduling conference was held on the 15<sup>th</sup> day of June, 2015, with the following participants: Melvin C. Orchard III, Hearing Officer; Wendy Soto, Executive Director to the Commission, Herbert K. Doby, Kenneth J. Connelly, Douglas G. Wardlow counsel for Judge Neely, and Patrick Dixon, Disciplinary Counsel. The following dates and deadlines will apply to further proceedings in this matter as set forth in part by the *Rules Governing the Commission on Judicial Conduct and Ethics*:

1. Counsel shall file any amendments to the pleadings on or before August 28, 2015.
2. Counsel shall file any dispositive motions on or before October 30, 2015.
3. All discovery shall be completed on or before October 30, 2015.
4. Counsel shall exchange all exhibit and witness information, including providing an exhibit and witness list in the format similar to that required by the federal court, (see attached), on or before November 19, 2015.
5. The adjudicatory hearing will commence on December 3, 2015, at 9:00 a.m. and continue as necessary through December 4, 2015, in the large courtroom, 2<sup>nd</sup> floor, at 200 North Center Street, Casper, Wyoming.

SO ORDERED this 19<sup>th</sup> day of June, 2015.

  
\_\_\_\_\_  
Mel C. Orchard III,  
Presiding Officer/Hearing Officer

CERTIFICATE OF SERVICE


I hereby certify that on the 19<sup>th</sup> day of June, 2015, I served the foregoing HEARING ORDER by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

Herbert K. Doby  
P.O. Box 130  
Torrington WY 82240

Patrick Dixon, Esq.  
Dixon & Dixon, LLP  
104 South Wolcott, Suite 600  
Casper WY 82601

James A Campbell  
Kenneth J. Connelly  
Douglas G. Wardlow  
Alliance Defending Freedom  
15100 N. 90<sup>th</sup> Street  
Scottsdale AZ 85260

Merrilyn Walz  
Walz Reporting  
3560 Gannett St.  
Casper WY 82609

  
Wendy J. Soto, Executive Director  
Commission on Judicial Conduct & Ethics  
PO Box 2645  
Cheyenne WY 82003  
Phone: 307-778-7792

cc: Adjudicatory Panel



COMMISSION ON JUDICIAL CONDUCT  
AND ETHICS

Official Record

FILED

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS

Date: 8/21/15

Wendy J. Soto

STATE OF WYOMING

Wendy J. Soto

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 MOTION FOR PROTECTIVE ORDER**

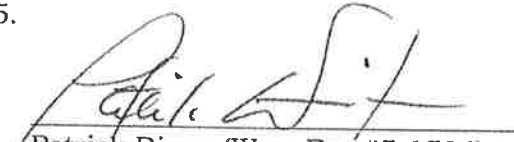
COMES NOW the Commission on Judicial Conduct and Ethics, by and through its attorney Patrick Dixon, and hereby moves the Hearing Officer for a protective order with respect to that certain W.R.Civ.P. 30(b)(6) Notice of Deposition, a copy of which is attached hereto as Exhibit 1. This motion is on the following grounds and for the following reasons:

1. Pursuant to Rule 30(b)(6), W.R.Civ.P., a party may notice and subpoena as a deponent only the following entities: "a public or private corporation or a partnership or association or governmental agency." The CJCE is neither a corporation, partnership, association nor governmental entity. It is a constitutionally created commission, promulgated pursuant to Wyo. Const. art. 5, §6(e)(iv).

2. The fourth, sixth, ninth and eleventh bullet point requests are confidential pursuant to Rule 22 of the Rules Governing the Commission on Judicial Conduct and Ethics.

3. All of the remaining requests, with the exception of the tenth request are prescribed by the Wyoming State Constitution, the Rules Governing the Commission on Judicial Conduct and Ethics or the Canons of Judicial Ethics and thus not proper subjects for inquiry and thus not reasonably calculated to lead to the discovery of admissible evidence and, further could lead to the disclosure of confidential matters.

DATED this 19 day of August, 2015.

  
Patrick Dixon (Wyo. Bar #5-1504)  
104 S. Wolcott, Suite 600  
Casper, Wyoming 82601  
(307) 234-7321  
(307) 234-0677 (facsimile)  
Disciplinary Counsel

**CERTIFICATE OF SERVICE**

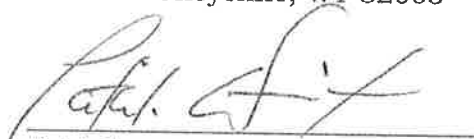
I, Patrick Dixon, do hereby certify that on the 19 day of August, 2015, I served the above and foregoing **CJCE's Motion for Protective Order** by placing a true and correct copy in the United States mail, duly postmarked and addressed to:

Herbert K. Doby  
Attorney at Law  
P.O. Box 130  
Torrington, Wyoming 82240

James A. Campbell  
Kenneth J. Connelly  
Douglas G. Wardlow  
Alliance Defending Freedom  
15100 N. 90<sup>th</sup> Street  
Scottsdale, Arizona 85260

Melvin C. Orchard, III  
Presiding Officer/Hearing Officer  
The Spence Law Firm, LLC  
Spence & McCalla  
P.O. Box 548  
Jackson, Wyoming 83001-0548

Wendy Soto, Executive Director  
Commission on Judicial Conduct and  
Ethics  
P.O. Box 2645  
Cheyenne, WY 82003

  
Patrick Dixon

**BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS  
STATE OF WYOMING**

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

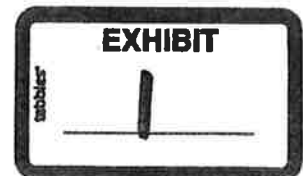
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**RESPONDENT HONORABLE RUTH NEELY'S  
WY. R. CIV. P. 30(B)(6) NOTICE OF DEPOSITION  
OF WYOMING COMMISSION ON JUDICIAL CONDUCT AND ETHICS**

---

PLEASE TAKE NOTICE that pursuant to Wyoming Rule of Civil Procedure 30(b)(6), counsel for Respondent, the Honorable Ruth Neely ("Judge Neely"), will take the deposition of the Wyoming Commission on Judicial Conduct and Ethics ("Commission") through one or more officers, agents, or other representatives, who the Commission shall designate to testify on its behalf regarding all information known or reasonably available to the Commission with respect to the matters identified in Schedule A. Respondent requests that the Commission provide written notice of the name(s) and position(s) of the individual(s) designated to testify on the Commission's behalf at least one calendar week before the deposition.

The deposition shall commence on **Tuesday, September 15, 2015**, beginning at **2:00 p.m. M.D.T.**, and continuing thereafter from day to day until completed, and it shall be held at **17th and Executive Suites**, located at **1623 Central Avenue, Cheyenne, WY 82001**, or at such other time and location as agreed upon by the parties. The deposition shall be taken before a duly certified court reporter and notary public authorized by law to administer oaths. It will be recorded stenographically and is to be used for the purposes of evidence and all other purposes consistent with the Wyoming Rules of Civil Procedure and the Rules Governing the Commission on Judicial Conduct and Ethics.



Dated August 12, 2015

s/

  
Kenneth J. Connelly\*

James A. Campbell\*  
Kenneth J. Connelly\*  
Douglas G. Wardlow\*  
Alliance Defending Freedom  
15100 N. 90th Street  
Scottsdale, Arizona 85260  
jcampbell@ADFlegal.org  
kconnelly@ADFlegal.org  
dwardlow@ADFlegal.org  
(480) 444-0020 Fax: (480) 444-0028

Herbert K. Doby  
WSB#5-2252  
P.O. Box 130  
dobyaw@embarqmail.com  
Torrington, WY 82240  
(307) 532-2700 Fax: (307) 532-2706

*Attorneys for Respondent*  
*\*Out-of-State Certification Obtained*

## SCHEDULE A


In accordance with Wy. R. Civ. P. 30(b)(6), Respondent designates the following matters for examination:

- The purposes served by the Code of Judicial Conduct, the manner in which the Commission seeks to advance the purposes of the Code, and the purposes served by disciplinary proceedings.
- The manner in which the Commission conducts business, including the formation of administrative committees, the purpose of those committees, and the composition of those committees.
- The general procedures, requirements, considerations, factors, and criteria taken into account by the Commission in appointing Investigatory and Adjudicatory Panels.
- The specific procedures, requirements, considerations, factors, and criteria taken into account by the Commission in appointing the Investigatory and Adjudicatory Panels in this matter.
- The general procedure whereby members of an Investigatory Panel or Adjudicatory Panel are chosen.
- The specific procedures, discussions, and considerations that led to the appointment of the Investigatory and Adjudicatory Panel members in this matter.
- The general procedures, requirements, considerations, factors, and criteria that the Commission evaluates when initiating investigations on its own motion or when pursuing complaints filed with it.
- The general procedures, requirements, considerations, factors, and criteria that the Commission evaluates when deciding whether to file a Notice of Commencement of Formal Proceedings.
- The specific procedures, requirements, considerations, factors, and criteria that the Commission evaluated when deciding whether to file the Notice of Commencement of Formal Proceedings in this matter.
- All of the Commission's allegations against Judge Neely in this matter.
- The history of judicial discipline recommended by the Commission and the resulting discipline handed down by the Wyoming Supreme Court in all matters since the Commission's inception.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12th day of August, 2015, I served the foregoing Notice of Deposition by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

Patrick Dixon, Esq.  
Dixon & Dixon, LLP  
104 South Wolcott Street, Suite 600  
Casper, WY 82601



---

Kenneth J. Connelly

**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

) COMMISSION ON JUDICIAL  
) CONDUCT AND ETHICS  
) COMMISSION ON JUDICIAL CONDUCT  
) No. 2014-27 AND ETHICS  
) Official Record  
) FILED 8/26/15  
) Date  
) Wendy J. Soto

---

**THE HONORABLE RUTH NEELY'S RESPONSE  
TO THE COMMISSION'S MOTION FOR PROTECTIVE ORDER**

---

The Commission on Judicial Conduct and Ethics ("Commission") is seeking to bar Judge Neely from obtaining relevant evidence critical to her defense against the Commission's attempt to remove her from judicial office. In light of Judge Neely's due process rights, and because the Commission's own governing rules and the Wyoming Rules of Civil Procedure plainly allow Judge Neely to obtain the discovery she seeks, the Presiding Officer of the Adjudicatory Panel should deny the Commission's Motion for Protective Order and compel the Commission to comply with Judge Neely's 30(b)(6) Notice of Deposition.

**Procedural Background**

On August 12, 2015, Judge Neely served on the Commission a Wy. R. Civ. P. 30(b)(6) Notice of Deposition ("Notice").<sup>1</sup> In that Notice, Judge Neely appropriately "describ[ed] with reasonable particularity the matters on which examination is requested" from the Commission.

---

<sup>1</sup> Commission Rule 9 expressly incorporates Rule 30 of the Wyoming Rules of Civil Procedure. See Wy. R. J. Cond. and Ethics Comm., Rule 9(a) ("Rule[] . . . 30 . . . of the Wyoming Rules of Civil Procedure shall apply to all proceedings before the Commission or its panels . . .").

Wy. R. Civ. P. 30(b)(6). On August 19, 2015, without consulting Judge Neely's counsel, the Commission served upon Judge Neely its Motion for Protective Order ("Motion"). Although no particular relief is formally requested in the Motion, the Commission appears to be arguing that because it is constitutionally created, it does not come within the purview of Rule 30(b)(6), and it therefore need not comply with the Rule's dictate to "designate one or more officers, directors, or managing agents . . . to testify on its behalf . . . as to matters known or reasonably available to the organization." *Id.* In its Motion, the Commission also contends that the matters designated for examination by Judge Neely, save for the one pertaining to the Commission's allegations in this matter, seek information that is not discoverable because it is purportedly either confidential or constitutes an improper subject for inquiry.

#### Argument

In this proceeding, the Commission seeks to publicly censure and remove Judge Neely from her position as both a circuit-court magistrate and a municipal-town judge based upon her statement that her sincerely held religious beliefs would not permit her to solemnize same-sex marriages. *See* Commission Answer to Interrogatory No. 8 (Affidavit of Kenneth J. Connelly ("Connelly Aff."), Exhibit 1). The Commission contends that by making this statement Judge Neely violated Rules 1.1, 1.2, 2.2, and 2.3 of the Wyoming Code of Judicial Conduct ("Code"). *See* Notice of Commencement of Formal Proceedings ¶ B. 1 (Connelly Aff., Exhibit 2). Judge Neely responds that she has not violated the Code and that the Commission's attempt to apply the Code in this matter violates her rights under both the United States and Wyoming Constitutions. *See* Verified Answer of Judge Neely (Connelly Aff., Exhibit 3). To prepare her defense, Judge Neely is permitted by the Wyoming Constitution, the Wyoming Rules of Civil Procedure, and the Commission's Rules to obtain discovery regarding the matters designated in



her Notice, all of which are reasonably calculated to lead to the discovery of admissible evidence.

**I. The Commission is Subject to Rule 30(b)(6).**

In its Motion, the Commission states that the “CJCE is neither a corporation, partnership, association nor governmental entity,” but rather a “constitutionally created commission, promulgated pursuant to Wyo. Const. art. 5, §(e)(iv).” Motion at ¶ 1. Given the perfunctory nature of this argument, it is difficult to discern the Commission’s rationale. Taking the argument in its most basic form, the Commission seems to be claiming that it is not a governmental entity. But this argument makes no sense because nothing about the Commission suggests that it is anything other than a governmental entity. The caption of this very matter confirms that the Commission is an arm of the State. And the Commission’s constitutional pedigree serves only to cement its status as a governmental entity—after all, it was constitutionally created as part of the State’s “Judicial Department,” an undoubted governmental entity. *See* Wyo. Const. art. V, § 6; Wyo. Const. art. II, § 1 (“The powers of the *government* of this state are divided into three distinct departments.”) (emphasis added).

The Commission’s powers bolster the conclusion that it is a governmental entity. It has the power to “receive, investigate, hear, and adjudicate allegations of judicial misconduct” and also may independently “impose discipline” upon a judge. Wyo. R. J. Cond. and Ethics Comm., Rule 3. The Commission has itself essentially conceded that it is a government entity when it described in detail the “compelling state . . . interest in a fair and impartial judiciary” that it purports to advance through this proceeding. *See* Commission Answer to Interrogatory No. 10 (Connelly Aff., Exhibit 1). Indeed, if the Commission’s contention that it is not a government

entity is correct, it had no power to initiate this proceeding and lacks any authority to continue it. It thus cannot be doubted that the Commission is a governmental entity.

Given this, the Commission might mean to argue that a “commission” that is “constitutionally created” is somehow a special governmental entity exempt from complying with Rule 30(b)(6). But there is no significance to the label “commission” that insulates the Commission from discovery rules, and the mode of the Commission’s birth, whether statutory or constitutional, is legally immaterial. Not surprisingly, the Commission fails to cite any legal authority supporting its position. In fact, the relevant law undercuts the Commission’s claim for an exemption.

The plain language of Rule 30(b)(6) is straightforward and unambiguous:

A party may in the party’s notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf . . .

Wy. R. Civ. P., Rule 30(b)(6). The Rule contains no qualifier suggesting that a “commission” or any other governmental entity not entitled “agency” is somehow excluded; nor does it provide that the mode of a governmental entity’s creation places it beyond the Rule’s scope.

Furthermore, persuasive case law confirms that the Commission does not fall outside Rule 30(b)(6). See *Graus v. OK Investments, Inc.*, 342 P.3d 365, 369 (Wyo. 2014) (noting that “federal court interpretations of their rules [of civil procedure] are highly persuasive in our interpretation of the corresponding Wyoming rules”). Indeed, federal courts have routinely held that governmental entities with labels other than “agency,” including governmental entities with the label “commission,” are subject to Rule 30(b)(6). See, e.g., *S.E.C. v. Merkin*, 283 F.R.D. 689, 696 (S.D. Fla.) *objections overruled*, 283 F.R.D. 699 (S.D. Fla. 2012) (holding that a party

had the right to take a Rule 30(b)(6) deposition of the Securities and Exchange Commission, which had brought enforcement action against him); *Ghandi v. Police Dep't of City of Detroit*, 74 F.R.D. 115, 121 (E.D. Mich. 1977) (finding that the Federal Bureau of Investigation is a "government agency" within the meaning of Rule 30(b)(6)). There is thus no legal basis for excluding the Commission from the requirements of the Rule.

**II. The Matters Designated by Judge Neely for Examination are Discoverable.**

The Commission asserts, again without argument or supporting authority, that the following four topics that Judge Neely designated for examination seek information that is not discoverable under Commission Rule 22:

- (1) the specific procedures, requirements, considerations, factors, and criteria the Commission took into account when it appointed the Investigatory and Adjudicatory Panels (the fourth topic designated for examination);
- (2) the specific procedures, discussions, and considerations that led to the appointment of the members of the Investigatory and Adjudicatory panels (the sixth topic designated for examination);
- (3) the specific procedures, requirements, considerations, factors, and criteria that the Commission evaluated when deciding whether to file the Notice of Commencement of Formal Proceedings against Judge Neely (the ninth topic designated for examination); and
- (4) the history of judicial discipline recommended by the Commission and the resulting discipline handed down by the Wyoming Supreme Court in all matters since the Commission's inception (the eleventh topic designated for examination).

See Exhibit 1 to Commission's Motion for Protective Order (Judge Neely's Notice of Rule 30(b)(6) Deposition of the Commission, Schedule A, Items 4, 6, 9, and 11).

The Commission's claim that Rule 22 of the Rules Governing the Commission on Judicial Conduct and Ethics bars Judge Neely from obtaining discovery about these topics is specious. Rule 22 provides that the Commission's proceedings and related information "shall be confidential." Wy. R. J. Cond. and Ethics Comm., Rule 22(a). But that provision is clearly

intended to prevent disclosure of information to the public. This fact is apparent from the Rule's command that "[n]o 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 [or related] information . . . , except in the course of official duty or as otherwise authorized by these rules." *Id.* This does not mean that information in the Commission's possession is not *discoverable*, but only that it cannot be disclosed outside of this confidential proceeding

Indeed, when the Rules do in fact limit the discoverability of certain information, they say so expressly. For example, Rule 11(i) provides that "all attorney notes or attorney work product are not discoverable." The same Rule further provides that "[a]ll communications of disciplinary counsel with an investigatory panel, including but not limited to disciplinary counsel's investigative report, shall be and remain *confidential*, and shall not be *discoverable*." Wyo. R. J. Cond. and Ethics Comm., Rule 11(i) (emphasis added). Clearly, the word "confidential" does not mean "non-discoverable." Any other interpretation would render redundant and meaningless Rule 11(i)'s provision that communications of disciplinary counsel "shall not be discoverable." *See Hede v. Gilstrap*, 107 P.3d 158, 163 (Wyo. 2005) (holding that statutory language "must be construed so that no portion is rendered meaningless") (citation omitted). Because Rule 22 does not address whether information is discoverable, the Commission's argument is baseless.

Moreover, the Commission has acknowledged by its conduct in discovery that information falling under the fourth, sixth, and ninth topics designated for examination is discoverable. Those topics relate to the appointment of the Investigatory and Adjudicative Panels and the decision to issue the Notice of Commencement of Formal Proceedings in this

proceeding. In accordance with Rule 11(i), the Commission withheld and refused to produce a recording of an Investigatory Panel meeting that occurred in the presence of disciplinary counsel. See CJCE's Privilege Log, Doc. No. 8 ("Audio recording of I-Panel Conference") (Connelly Aff., Exhibit 4). But the Commission produced recordings of two other teleconferences of the Investigatory Panel and the Commission's Executive Director that were held outside of counsel's presence. See 7/28/15 Disciplinary Counsel e-mail to Judge Neely's Counsel re: recordings of Investigatory Panel Meetings (Connelly Aff., Exhibit 5). Those recordings disclose information related to the fourth, sixth, and ninth topics designated for examination. Among other things, the recordings include an oral motion to appoint the Investigatory Panel, the reasons the Investigatory Panel believed that the investigation of Judge Neely was warranted, a discussion of whether the Investigatory Panel had probable cause to appoint an Adjudicatory Panel and commence formal proceedings, and an oral motion to convene an Adjudicatory Panel and issue a Notice of Commencement of Formal Proceedings. Through its disclosure of this information, the Commission not only has acknowledged that this information is discoverable, it has also waived any objection it might have had to Judge Neely's discovery of it. See *In re Qwest Commun. Intern. Inc.*, 450 F.3d 1179 (10th Cir. 2006) (holding that a corporation had waived attorney-client privilege and work-product-doctrine protection by producing documents in earlier investigation, and affirming a district court order compelling production).

In addition, information concerning the eleventh topic designated for examination (the history of discipline recommended by the Commission to the Wyoming Supreme Court) is not only discoverable, but is by rule public and not confidential. Rule 22(a) expressly provides that "[a] recommendation filed by the Commission with the Wyoming Supreme Court loses its

confidential character upon its filing.” Wy. R. J. Cond. and Ethics Comm., Rule 22(a). Thus, the Commission’s objection to the disclosure of that information is wholly unpersuasive.


Finally, the Commission argues that except for the tenth topic designated for examination, all the remaining topics—namely, Numbers 1, 2, 3, 5, 7, and 8—are “prescribed” by the Wyoming State Constitution, the Commission’s Rules, or the Canons of Judicial Ethics, and are somehow “not proper subjects for inquiry.” But the fact that constitutional or statutory rules address a particular subject matter does not make it off limits for discovery. For example, the Commission’s Rules set forth certain procedures and criteria for the selection of Investigatory and Adjudicatory Panels. But the Rules do not disclose how those procedures are put into practice, the existence of policies implementing the Rules, the existence of informal rules, or the application of the procedures in any particular case. This information is reasonably calculated to lead to the discovery of admissible evidence that would support Judge Neely’s affirmative defenses and is thus discoverable. *See, e.g., Detoy v. City & Cnty. of San Francisco*, 196 F.R.D. 362, 365 (N.D. Cal. 2000) (denying a motion for a protective order with respect to a Rule 30(b)(6) deposition, and compelling governmental entities to produce witnesses adequately prepared to testify regarding the entities’ training and disciplinary history). Accordingly, Judge Neely should be permitted to depose the Commission about these topics.

In sum, “[t]he burden of establishing entitlement to nondisclosure rests with the party resisting disclosure and not the party seeking it.” *Greenwood v. Wierdsma*, 741 P.2d 1079, 1089 (Wyo. 1987). For the reasons discussed above, the Commission has not established any basis for resisting discovery of the information sought in Judge Neely’s Notice. The Commission’s Motion thus lacks merit.

**Conclusion**

For the foregoing reasons, the Presiding Officer of the Adjudicatory Panel should deny the Commission's Motion for Protective Order. In the alternative, the Presiding Officer should schedule a telephonic hearing concerning the Commission's Motion.

Dated: August 21, 2015



---

Kenneth J. Connelly\*

James A. Campbell\*  
Kenneth J. Connelly\*  
Douglas G. Wardlow\*  
Alliance Defending Freedom  
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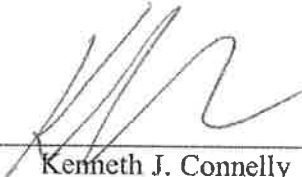
Herbert K. Doby  
WSB#5-2252  
P.O. Box 130  
dobyLaw@embarqmail.com  
Torrington, WY 82240  
(307) 532-2700 Fax: (307) 532-2706

*Attorneys for Respondent*  
*\*Out-of-State Certification Obtained*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 21st day of August, 2015, I served the foregoing Response by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

Patrick Dixon, Esq.  
Dixon & Dixon, LLP  
104 South Wolcott Street, Suite 600  
Casper, WY 82601

  
\_\_\_\_\_  
Kenneth J. Connelly



**BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS  
STATE OF WYOMING**

An inquiry concerning	)	COMMISSION ON JUDICIAL
	)	CONDUCT AND ETHICS
The Honorable Ruth Neely	)	
	)	COMMISSION ON JUDICIAL CONDUCT
Municipal Court Judge and	)	AND ETHICS
Circuit Court Magistrate	)	Official Record
Ninth Judicial District	)	FILED
Pinedale, Sublette County	)	Date: 8/26/15
	)	<i>Wendy J. Soto</i>
	)	Wendy J. Soto

---

**AFFIDAVIT OF KENNETH J. CONNELLY IN SUPPORT OF RESPONDENT THE  
HONORABLE RUTH NEELY'S RESPONSE TO THE COMMISSION'S  
MOTION FOR PROTECTIVE ORDER**

---

I, Kenneth J. Connelly, after being duly sworn, declare the following:

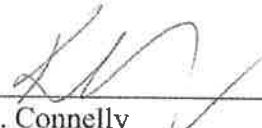
1. I am one of the attorneys representing Respondent Honorable Ruth Neely ("Judge Neely") in this action. I submit this affidavit in support of Judge Neely's Response to the Commission's Motion for Protective Order.
2. Attached hereto as Exhibit 1 is a true and correct copy of the Commission on Judicial Conduct and Ethics's Answers to Judge Neely's Interrogatories, dated July 27, 2015, produced by the Commission during discovery.
3. Attached hereto as Exhibit 2 is a true and correct copy of the Notice of Commencement of Formal Proceedings brought against Judge Neely by the Commission, dated March 4, 2015.
4. Attached hereto as Exhibit 3 is a true and correct copy of Judge Neely's Verified Answer to the Commission's Notice of Commencement of Formal Proceedings, filed on April, 28, 2015.

5. Attached hereto as Exhibit 4 is a true and correct copy of the Commission on Judicial Conduct and Ethics's Privilege Log, produced by the Commission during discovery.

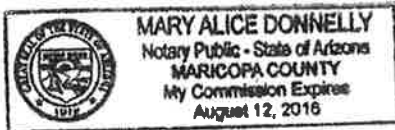
6. Attached hereto as Exhibit 5 is a true and correct copy of an e-mail from Disciplinary Counsel to Judge Neely's Counsel regarding recordings of Investigatory Panel Meetings in this matter, dated July 28, 2015, produced by the Commission during discovery.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

FURTHER, AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
Kenneth J. Connelly

SUBSCRIBED AND SWORN TO before me this 21<sup>st</sup> day of August, 2015, by Kenneth J. Connelly.



  
\_\_\_\_\_  
Notary Public

My commission expires: August 12, 2016

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.

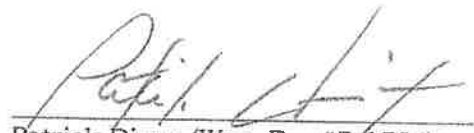
**INTERROGATORY NO. 20:** For each Request for Admission that is denied, describe in detail the reason for the denial and all facts and details supporting the denial.

**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.

DATED this 27 day of July, 2015.

  
Patrick Dixon (Wyo. Bar #5-1504)  
104 S. Wolcott, Suite 600  
Casper, Wyoming 82601  
(307) 234-7321  
(307) 234-0677 (facsimile)  
Disciplinary Counsel

VERIFICATION

STATE OF WYOMING            )  
  ) ss.  
COUNTY OF SHERIDAN    )

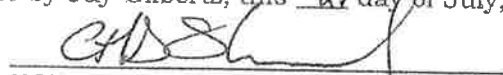
I, Jay Gilbertz, as the acting Presiding Officer of the I-Panel of the Commission of Judicial Conduct and Ethics, being first duly sworn upon oath, state that I have read the foregoing Answers to Interrogatories and that the statements contained therein are true to the best of my information, knowledge and belief.

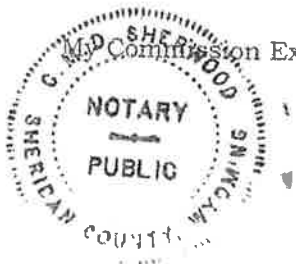
Dated this 27<sup>th</sup> day of July, 2015.

  
Jay Gilbertz

SUBSCRIBED and SWORN to before me by Jay Gilbertz, this 27<sup>th</sup> day of July, 2015.

March 20, 2019

  
NOTARY PUBLIC

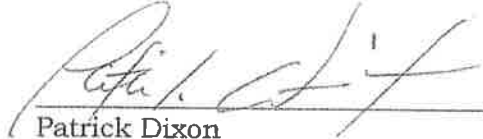


**CERTIFICATE OF SERVICE**

I, Patrick Dixon, do hereby certify that on the 27 day of July, 2015, I served the above and foregoing ***CJCE's Answer to Interrogatories*** by placing a true and correct copy in the United States mail, duly postmarked and addressed to:

Herbert K. Doby  
Attorney at Law  
P.O. Box 130  
Torrington, Wyoming 82240

James A. Campbell  
Kenneth J. Connelly  
Douglas G. Wardlow  
Alliance Defending Freedom  
15100 N. 90<sup>th</sup> Street  
Scottsdale, Arizona 85260

  
Patrick Dixon



# EXHIBIT

# 2

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 )

COMMISSION ON JUDICIAL CONDUCT  
AND ETHICS  
Official Record  
FILED  
Date: *March 4, 2015*  
*Wendy J. Soto*  
Wendy J. Soto

No. 2014-27

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**NOTICE OF COMMENCEMENT OF FORMAL PROCEEDINGS**

---

To: Honorable Ruth Neely  
Municipal Court Judge  
City of Pinedale  
P.O. Box 1386  
Pinedale, Wyoming 82941

WHEREAS, this matter came before the Investigatory Panel on its own motion pursuant to Rule 7(b) of the Rules Governing the Commission on Judicial Conduct and Ethics, and based on a newspaper article published in the Sublette Examiner quoting Judge Neely;

WHEREAS, said own motion matter was reviewed by the Investigatory Panel; and

WHEREAS, an inquiry was made with Judge Neely regarding this matter at which time Judge Neely was provided with a copy of the newspaper article; and

WHEREAS, the Investigatory Panel determined that there is reasonable cause to believe Judge Neely engaged in judicial misconduct; and

WHEREAS, the Investigatory Panel has referred the matter to an Adjudicatory Panel of the CJCE for the institution of formal proceedings in accordance with Rule 8(g) of the Rules Governing the Commission on Judicial Conduct and Ethics.

NOTICE IS HEREBY GIVEN pursuant to Rule 8(a) of the Rules Governing the Commission on Judicial Conduct and Ethics that Disciplinary Counsel's Investigation of said verified complaint would appear to establish the following:

A. *Factual Background.*

1. Judge Ruth Neely is a Municipal Court Judge, presiding over the Municipal Court of the Town of Pinedale, Wyoming. Judge Neely holds her position pursuant to the provisions of Wyoming Statutes § 5-6-101, *et seq.*, and Chapter 23 of the Municipal Code of the Town of Pinedale. Judge Neely has served as a Municipal Judge for approximately 21 years.

2. In 2001 Judge Neely was appointed Magistrate by then Circuit Court Judge John Crow. The purpose of this appointment was to confer authority upon Judge Neely to perform marriage ceremonies in accordance with Wyoming Statute § 20-1-106. Upon his appointment to the bench, Circuit Court Judge Curt A. Haws continued Judge Neely's appointment in the same capacity. Since her appointment in 2001, Judge Neely has performed numerous civil marriage ceremonies in her capacity as Circuit Court Magistrate.

3. On October 17, 2014, in the case of *Guzzo v. Mead*, 2014 WL 5317797 (D.Wyo.2014), the United States District Court for the District of

Wyoming, following established Tenth Circuit Court of Appeals precedence, determined that same sex couples enjoyed the same constitutional right to participate in civil marriage as heterosexual couples. Judge Skavdahl's ruling was not appealed and became the law of the state of Wyoming the following Monday, October 20, 2014.

4. Sometime during the week of December 8, 2014, Judge Neely was contacted by Ned Donovan, a reporter for the local papers in Sublette County, Wyoming. Judge Neely participated in an interview, or at least a conversation with Donovan on the subject of same sex marriage. During the course of the conversation or the interview, Judge Neely informed Donovan that she would be unable to perform same sex marriages as a result of her religious beliefs. Judge Neely was quoted by Donovan as saying "When law and religion conflict, choices have to be made. I have not yet been asked to perform a same sex marriage."

5. The substance of Judge Neely's conversation or interview with Donovan, including the quoted language appeared in the Sublette Examiner on December 11, 2014 and may have appeared in other local publications in that timeframe.

6. As a result of these publications and conversations with Judge Neely, Judge Haws suspended Judge Neely's authority to perform marriage ceremonies on or about January 15, 2015.

7. In the meantime, Judge Neely, with the advice of Judge Haws, voluntarily refrained from performing marriage ceremonies for any couples,

heterosexual or otherwise, and the last marriage ceremony performed by Judge Neely occurred on December 13, 2014.

8. In response to inquiries from this Commission, Judge Neely has admitted to making the comments attributed to her in the newspaper article and has reiterated her position with respect to same sex marriages, citing her religious beliefs and her First Amendment rights, presumably to the free exercise of religion.

B. *Code of Judicial Conduct.*

1. The following provisions of the Wyoming Code of Judicial Conduct are implicated by the facts recited above:

**Canon 1. A Judge Shall Uphold the Integrity and Independence of the Judiciary.**

A judge shall uphold and promote the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

**Rule 1.1. Compliance with the Law.**

A judge shall comply with the law, including the Code of Judicial Conduct.

**Rule 1.2. Promoting Confidence in the Judiciary.**

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

**Canon 2. A judge shall perform the duties of judicial office.**

A judge shall perform the duties of judicial office impartially, competently, and diligently.

**Rule 2.2. Impartiality and Fairness.**

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

**Rule 2.3. Bias, Prejudice and Harassment.**

(A) A judge shall perform the duties of judicial office, including administrative duties without bias or prejudice.

(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, socioeconomic status, or political affiliation, and shall not prevent court staff, court officials, or others subject to the judge's direction and control to do so. (Emphasis added.)

2. 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.

C. *Notification of Members of Adjudicatory Panel.*


1. The following are members of the Adjudicatory Panel: Mel Orchard, Presiding Officer, Honorable Wendy Bartlett and Barbara Dilts.

D. *Advisement.*

1. Pursuant to Rule 8(b) of the Rules Governing the Commission on Judicial Conduct and Ethics, Judge Neely is hereby advised that she shall have twenty (20) days from the date of service of the instant *Notice of Commencement of Formal Proceedings* within which to file a written, verified answer to the

allegations above made. Her response, if any, should be served on the undersigned counsel for the CJCE.

DATED this 4<sup>th</sup> day of March, 2015.



---

Patrick Dixon (Wyo. Bar #5-1504)  
104 S. Wolcott, Suite 600  
Casper, Wyoming 82601  
(307) 234-7321  
(307) 234-0677 (facsimile)  
Disciplinary Counsel

**CERTIFICATE OF SERVICE**

I hereby certify that on the 4<sup>th</sup> day of March, 2015, I served the foregoing **NOTICE OF COMMENCEMENT OF FORMAL PROCEEDINGS** by placing a true and correct copy thereof in the United States Mail, certified mail, postage prepaid, and properly addressed to the following:

Hon. Ruth Neely  
Municipal Court Judge  
City of Pinedale  
PO Box 1386  
Pinedale WY 82941

Patrick Dixon, Esq., Chair  
Dixon & Dixon, LLP  
104 South Wolcott Street, Suite 600  
Casper, WY 82601



Wendy J. Soto  
Executive Director  
Commission on Judicial Conduct & Ethics  
P.O. Box 2645  
Cheyenne, WY 82003  
Phone: (307) 778-7792



# EXHIBIT

# 3

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS  
STATE OF WYOMING

An inquiry concerning	)	COMMISSION ON JUDICIAL
	)	CONDUCT AND ETHICS
The Honorable Ruth Neely	)	
	)	No. 2014-27
Municipal Court Judge and	)	
Circuit Court Magistrate	)	COMMISSION ON JUDICIAL CONDUCT
Ninth Judicial District	)	AND ETHICS
Pinedale, Sublette County	)	Official Record
	)	FILED
		Date: 4/28/15
		<i>Wendy J. Soto</i>
		Wendy J. Soto

---

**VERIFIED ANSWER**

---

The Honorable Ruth Neely, Respondent, for her Verified Answer to the Notice of Commencement of Formal Proceedings (the "Notice") filed by the Commission on Judicial Conduct and Ethics (the "Commission"), states and alleges as follows:

1. Except as expressly admitted or otherwise specifically pleaded herein, Respondent denies each and every allegation in the Notice and puts the Commission to its strict proof thereof.
2. Respondent admits the allegations contained in Section A, Paragraph 1 of the Notice.
3. With respect to the allegations contained in Section A, Paragraph 2 of the Notice:
  - a. Respondent admits that former Circuit Court Judge John Crow appointed her as a Circuit Court Magistrate with the authority to perform marriages;
  - b. Respondent admits that, upon his appointment to the bench, Circuit Court Judge Curt A. Haws appointed Respondent as a Circuit Court Magistrate;

- c. Respondent admits that since her initial appointment in or around 2001, she has performed numerous civil marriage ceremonies as a Circuit Court Magistrate; and
  - d. Respondent denies each and every remaining allegation contained in Section A, Paragraph 2.
4. With respect to the allegations contained in Section A, Paragraph 3 of the Notice:
    - a. Respondent states that the case of *Guzzo v. Mead*, 2014 WL 5317797 (D. Wyo. 2014), speaks for itself; and
    - b. Respondent states that the remaining allegations contained in Section A, Paragraph 3 do not call for a response, but to the extent that a response is deemed necessary, Respondent denies those allegations in their entirety.
  5. With respect to the allegations contained in Section A, Paragraph 4 of the Notice:
    - a. Respondent admits that she was contacted by reporter Ned Donovan in December 2014;
    - b. Respondent admits that Ned Donovan made inquiries of her regarding the topic of same-sex marriage;
    - c. Respondent admits that she informed Ned Donovan that solemnizing same-sex marriages would violate her religious beliefs;
    - d. Respondent admits that she was quoted by Ned Donovan as saying: "When law and religion conflict, choices have to be made. I have not yet been asked to perform a same sex marriage"; and
    - e. Respondent denies each and every remaining allegation contained in Section A, Paragraph 4.
  6. With respect to the allegations contained in Section A, Paragraph 5 of the Notice:

- a. Respondent admits that an article authored by Ned Donovan appeared in the Sublette Examiner on December 11, 2014;
  - b. Respondent admits that the article included the language that is quoted in Section A, Paragraph 4 of the Notice;
  - c. Respondent admits that similar reports may have appeared in other local publications; and
  - d. Respondent is without sufficient information to respond to the remaining allegations contained in Section A, Paragraph 5 of the Notice and therefore denies those allegations.
7. With respect to the allegations contained in Section A, Paragraph 6 of the Notice:
- a. Respondent admits that on or about January 15, 2015, Judge Haws suspended her from performing marriage ceremonies; and
  - b. Respondent denies each and every remaining allegation contained in Section A, Paragraph 6.
8. With respect to the allegations contained in Section A, Paragraph 7 of the Notice:
- a. Respondent admits that she voluntarily refrained from performing marriage ceremonies before Judge Haws suspended her from performing them;
  - b. Respondent states that the last marriage ceremony she performed occurred on December 31, 2014; and
  - c. Respondent denies each and every remaining allegation contained in Section A, Paragraph 7.
9. With respect to the allegations contained in Section A, Paragraph 8 of the Notice:

- a. Respondent admits that, in response to an inquiry from the Commission, she cited her First Amendment rights and reiterated that solemnizing same-sex marriages would violate her religious beliefs; and
  - b. Respondent denies each and every remaining allegation contained in Section A, Paragraph 8.
10. Respondent denies each and every allegation contained in Section B, Paragraph 1 of the Notice.
  11. Respondent denies each and every allegation contained in Section B, Paragraph 2 of the Notice.
  12. Section C, Paragraph 1 of the Notice does not call for a response.
  13. Section D, Paragraph 1 of the Notice does not call for a response.

#### **First Affirmative Defense**

The Notice fails to state a claim upon which relief can be granted.

#### **Second Affirmative Defense**

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B, Paragraph 1 of the Notice would, under these circumstances, violate Respondent's freedom-of-expression rights protected by the First Amendment to the United States Constitution.

#### **Third Affirmative Defense**

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B, Paragraph 1 of the Notice would, under these circumstances, violate Respondent's freedom-of-expression rights protected by Article 1, Section 20 of the Wyoming Constitution.

**Fourth Affirmative Defense**

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B, Paragraph 1 of the Notice would, under these circumstances, violate Respondent's right to the free exercise of religion protected by the First Amendment to the United States Constitution.

**Fifth Affirmative Defense**

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B, Paragraph 1 of the Notice would, under these circumstances, violate Respondent's right to the free exercise of religion protected by Article 1, Section 18 and Article 21, Section 25 of the Wyoming Constitution.

**Sixth Affirmative Defense**

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B, Paragraph 1 of the Notice would, under these circumstances, constitute a religious test in violation of Article VI, Clause 3 of the United States Constitution.

**Seventh Affirmative Defense**

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B, Paragraph 1 of the Notice would, under these circumstances, constitute a religious test in violation of Article 1, Section 18 and Article 21, Section 25 of the Wyoming Constitution.

**Eighth Affirmative Defense**

The provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B, Paragraph 1 of the Notice are vague and overbroad in violation of the First Amendment and the Fourteenth Amendment to the United States Constitution.

**Ninth Affirmative Defense**

The provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B, Paragraph 1 of the Notice are vague and overbroad in violation of Article 1, Sections 6, 7, and 20 of the Wyoming Constitution.

**Tenth Affirmative Defense**

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B, Paragraph 1 of the Notice would, under these circumstances, violate Respondent's right to equal protection of the law under the Fourteenth Amendment to the United States Constitution.

**Eleventh Affirmative Defense**

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B, Paragraph 1 of the Notice would, under these circumstances, violate Respondent's right to equal protection of the law under Article 1, Sections 2, 3, and 34 of the Wyoming Constitution.

**Twelfth Affirmative Defense**

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B, Paragraph 1 of the Notice would, under these circumstances, violate the Establishment Clause of the First Amendment to the United States Constitution.

**Thirteenth Affirmative Defense**

Applying the provisions of the Wyoming Code of Judicial Conduct that the Commission cites in Section B, Paragraph 1 of the Notice would, under these circumstances, violate the state constitutional provisions that address the establishment of religion, including Article 1, Section 18 and Article 21, Section 25 of the Wyoming Constitution.

DATED this 27th day of April, 2015.

Respectfully Submitted,

By:



Herbert K. Doby  
WSB # 5-2252  
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dwardlow@alliancedefendingfreedom.org  
(480) 444-0020 Fax: (480) 444-0028

*Attorneys for Respondent*

*\*Pro Hac Vice Applications concurrently  
filed*



VERIFICATION OF ANSWER

I, Ruth Neely, the undersigned, do hereby swear and affirm, under penalty of perjury, that the information contained in my Verified Answer to the Notice of Commencement of Formal Proceedings of the Commission on Judicial Conduct and Ethics is true and accurate.

Dated this 24th day of April, 2015.

Ruth Neely
Signature

INSTRUCTIONS TO NOTARY

This form must be the product of an oath, not merely an acknowledgment. Before the verification is signed you must:

- 1. Place the affiant under oath;
2. Ensure that the affiant understands that all assertions are sworn to as accurate and that the affiant is subject to the penalty of perjury for any false statement; and
3. Have the verification signed in your presence.

STATE OF WYOMING )
COUNTY OF Sublette ) ss

Subscribed and sworn to me this 24 day of April, 2015.

By Ruth Neely

[Signature]
Notary Public



My Commission Expires: 12-8-18

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27th day of April, 2015, I served the foregoing Verified Answer by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

Wendy J. Soto  
Executive Director  
Commission on Judicial Conduct & Ethics  
P.O. Box 2645  
Cheyenne, WY 82003

Patrick Dixon, Esq.  
Dixon & Dixon, LLP  
104 South Wolcott Street, Suite 600  
Casper, WY 82601

  
Herbert K. Doby

# EXHIBIT

# 4

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 PRIVILEGE LOG**

Doc. No.	Description	Pages
1	2/23/15 Letter Connolly to Dixon with contract for legal services	4
2	2/24/15 Email chain Dixon/Soto	2
3	2/26/15 Faxed note Dixon to Soto with Draft Notice	6
4	3/9/15 Dixon memo to Connolly re settlement discussions	1
5	3/10/15 Soto email to Dixon	1
6	3/9/15 Contract for Legal Services	2
7	3/10/15 notes on I-Panel conference call in presence of legal counsel to discuss settlement	3
8	Audio recording of I-Panel Conference	
9	4/9/15 letter Dixon to Soto	3
10	6/30/15 letter Dixon to Soto	11

# EXHIBIT

# 5

**From:** [pdixn@aol.com](mailto:pdixn@aol.com)  
**To:** [dobyrlaw@embarqmail.com](mailto:dobyrlaw@embarqmail.com); [Doug Wardlaw](mailto:Doug.Wardlaw); [Jim Campbell](mailto:Jim.Campbell); [Ken Connelly](mailto:Ken.Connelly); [Mary Alice Donnelly](mailto:Mary.Alice.Donnelly)  
**Cc:** [wendy.soto@wyoboards.gov](mailto:wendy.soto@wyoboards.gov)  
**Subject:** Fwd: Recordings  
**Date:** Tuesday, July 28, 2015 1:49:15 PM  
**Attachments:** [2014-27NeelyIpanel1.6.15.DS2](#)  
[2014-27NeelyIPanel2.18.15.DS2](#)

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Counsel,

Yesterday, We served, the old fashioned way, responses to your discovery. Attached to this email from Ms. Soto are the audio recordings of the two, non- privileged I-panel meetings per your request. If you have any problems downloading or opening them, let me know and we will figure out something else. pat dixon

---

From: [wendy.soto@wyoboards.gov](mailto:wendy.soto@wyoboards.gov)  
To: [pdixn@aol.com](mailto:pdixn@aol.com)  
Sent: 7/16/2015 4:19:06 P.M. Mountain Daylight Time  
Subj: Recordings

Pat,

Attached you will find the recordings of the I panel meetings in 2014-27.

Wendy J. Soto  
Executive Director  
Commission on Judicial Conduct and Ethics  
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BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS

STATE OF WYOMING

COMMISSION ON JUDICIAL CONDUCT  
AND ETHICS

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

No. 2014-27

Official Record

FILED

Date: 8/28/15

Wendy J. Soto

**CJCE's REPLY TO THE HONORABLE RUTH NEELY'S RESPONSE TO THE  
COMMISSION'S MOTION FOR PROTECTIVE ORDER**

COMES NOW the Commission on Judicial Conduct and Ethics (CJCE or Commission), by and through its attorney Patrick Dixon, and submits the following reply to THE HONORABLE RUTH NEELY'S RESPONSE TO THE COMMISSION'S MOTION FOR PROTECTIVE ORDER:

1. *The CJCE is not subject to a Rule 30(b)(6) Notice.*

This issue should be dispositive of all issues raised by the *CJCE's Motion for Protective Order*. To start, throughout her response, the Judge attempts to blur the issue by characterizing the CJCE as a governmental *entity*. While the CJCE may or may not be a governmental entity, it is clearly not a governmental *agency* for the purposes of Rule 30(b)(6), W.R.Civ.P. As noted in the motion, a party may notice and subpoena as a deponent "a public or private corporation or a partnership or association or governmental *agency*." Rule 30(b)(6), W.R.Civ.P. *Agency* is a term of art and is not synonymous with *entity*.

Because, as a matter of law, the CJCE is not a governmental *agency*, it is not subject to the notice and subpoena.

The CJCE is a constitutionally created organ of the Wyoming Judicial Department. See Wyo. Const. art. 5, § 6. It acts according to rules promulgated by the

Wyoming Supreme Court, *Id.* at § 6(e)(iv); CJCE Rule 1,<sup>1</sup> and is charged with disciplining, suspending, removing, and retiring judicial officers on the grounds of misconduct or disability, Wyo. Const. art. 5, § 6(d); CJCE Rule 3(a). While the CJCE may impose a private censure without further approval, it must recommend more substantial actions to the Wyoming Supreme Court, which has the ultimate authority to act. *See Id.* at §6(d), (f); CJCE Rule 12(a).

The CJCE has a total of twelve members, but operates through investigatory and adjudicatory panels that are appointed by the Commission chair and consist of between three and five members. Wyo. Const. art. 5, § 6(a), (c); Rules 5(b), 7 and 8.

Courts have consistently characterized analogous judicial commissions as “quasi judicial” in nature. *Adkins v. Kansas Commission on Judicial Qualification*, 2011 WL 5024346 (D.Ka.2011) at p. 4, characterizing the Commission as a quasi judicial body entitled to judicial immunity; *McKeown v. N.Y. State Com’n on Judicial Conduct*, 377 Fed.Appx. 121, 124, 2010 WL 1977825 (2<sup>nd</sup> Circ.2010), recognizing judicial immunity in the state judicial commission; *First Amendment Coalition v. Judicial Inquiry and Review Board*, 784 Fed.2d 467, 470 (3<sup>rd</sup> Circ.1986), characterizing the board as a “constitutionally independent body.”

Under Wyoming law, a governmental *agency* is defined as follows:

(ii) “agency” means any authority, bureau, board, commission, committee, or sub-agency of the state, a county, a municipality or other political subdivision which is created by or pursuant to the Wyoming Constitution, statute or ordinance, **other than the state legislature or the judiciary.** (Emphasis added.)

Wyoming Statute § 16-4-402(a)(ii). At least for the purposes of the Wyoming Public Meetings Act, judicially created entities are treated differently from other governmental

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<sup>1</sup> Unless otherwise noted all references to Rules are references to the Rules Governing the Commission on Judicial Conduct and Ethics.



agencies and are not subject to the requirements of the Act. Similarly, the Wyoming Public Records Act does not apply where "inspection is prohibited by Rules promulgated by the Supreme Court." Wyoming Statute § 16-4-203(a)(iii). Judicial and quasi-judicial bodies should be entitled to the same freedom from inquiry under Rule 30(b)(6).

Although the Wyoming Supreme Court has not passed directly on this question, this position is supported by its holding in *Decker v. State ex rel. Wyoming Medical Commission*, 208 WY 100, 191 P.3d 105 (Wyo.2008). In *Decker* the Workers' Compensation claimant contended that he was deprived of due process because the deliberations of the Medical Review Panel were not subject to review under the Public Meetings Act. The Court observed that the Medical Review Panels were the logical extension of the Office of Administrative Hearings, charged with deciding workers' compensation cases. As such, the Court characterized the panels as quasi-judicial in nature and thus their deliberations were not subject to public scrutiny. *Id.* at ¶¶11 and 17, pp. 115 and 117. The logic of *Decker* should be persuasive on this issue.

The CJCE is a creature of Article 5 of the Wyoming Constitution, the article which establishes the judiciary. It is charged with enforcing the Code of Judicial Conduct and does so following a body of rules promulgated by the Wyoming Supreme Court. It is consistently characterized by the legal authorities as a quasi-judicial body. By definition, it is not a governmental agency under Wyoming law and thus should not be subject to deposition and subpoena under the Wyoming Rules of Civil Procedure.

2. *The CJCE has not waived the confidentiality requirement of Rule 22.*

By its motion the CJCE has objected to producing a witness to testify to the fourth, sixth and ninth bullet point requests in the Judge's notice. Generically, these contemplate inquiry into specific procedures relating to the appointment of the

adjudicatory and the investigatory panels in this proceeding. In arguing against the motion, the Judge reads the confidentiality requirements of Rule 22 narrowly, at least inferring that the right of confidentiality inures only to the benefit of the Judge. While the Judge may waive confidentiality as to the "subject matter" of the proceeding (Rule 22(c)), there is a broader right of confidentiality which belongs to the CJCE. In that regard, Rule 22(a) provides as follows:

(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.

While that broad proscription of confidentiality serves the judge's interest, it also serves the interests of the Commission. Just as a judge or jury's deliberations are confidential, the proceedings of the Commission need to remain confidential for it to function properly.

Judge Neely argues that the CJCE has waived the confidentiality of its proceedings by producing transcripts of two I-panel meetings. While those were produced in a good faith attempt at transparency, on reflection, they should not have been produced. The question, then, becomes does this constitute a waiver of Rule 22(a)?

In response, the CJCE submits that it cannot waive that which is not waivable. It is axiomatic that certain things may not be waived. For example, a party may not waive subject matter jurisdiction. *Weller v. Weller*, 960 P.2d 493, 496 (Wyo.1998); *Cotton v. Brow*, 903 P.2d 530 (Wyo.1995). Similarly, in most instances, the statute of limitations may not be waived. *BHP Petroleum (Americas), Inc. v. Texaco Exploration and Production, Inc.*, 1 P.3d 1253 (Wyo. 2000); *Boller v. Western Law Associates, P.C.*, 828 P.2d 1182 (Wyo.1992); *Seckman v. Wyo-Ben, Inc.*, 783 P.2d 161 (Wyo.1989). The

confidentiality of Rule 22 falls into this same category. The confidentiality provisions are rules promulgated by the Wyoming Supreme Court. Disciplinary counsel can no more waive these requirements than he could waive Rule 4 of the Wyoming Rules of Appellate Procedure.

Second, as a matter of fact, the CJCE did not waive the confidentiality of Rule 22 in responding to Requests for Production of Documents. The CJCE objected to the requests, *in toto*, on the basis of Rule 22. See General Objection to the CJCE'S RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS attached hereto as Exhibit A. The audio recordings were produced responsive to Request No. 11, to which CJCE made further objection. See Exhibit A, pp. 4-5. The Wyoming Supreme Court has consistently defined waiver as "an express, voluntary, and intentional relinquishment of a known right, or is conduct that shows an intentional relinquishment of that right." *Jensen v. Fremont Motors, Cody, Inc.*, 2002 WY 173, ¶24, 58 P.3d 322, 328 (Wyo.2002). Thus, it is disingenuous for Judge Neely to suggest there has been a waiver of the confidentiality of Rule 22.

3. *The CJCE should not have to designate a witness to testify to historical discipline.*

The eleventh designation in the Rule 30(b)(6) notice asks the CJCE to designate an individual to testify to the "history of judicial discipline recommended by the Commission and the resulting discipline handed down by the Wyoming Supreme Court in all matters since the Commission's inception." First, except with respect to the *Lopez* discipline which was handed down in 2012, there is no person affiliated with CJCE who would have knowledge of prior disciplines. Second, except for the recommendation and resultant discipline, there is nothing to which the designated witness can testify. In material part, Rule 22(a) provides:

A recommendation filed by the Commission with the Wyoming Supreme Court loses its confidential character upon its filing. However, the record which is the basis of the recommendation remains confidential unless otherwise ordered.

To the extent that recommendations have been made and discipline handed down, they have been provided to Judge Neely and they speak for themselves. Under the confidentiality rule, the witness may not amplify on those matters.

Finally, this designation cannot reasonably be calculated to lead to the discovery of admissible evidence. None of the four public disciplines handed down by the Wyoming Supreme Court in the history of the Commission are even remotely related to the factual circumstances that underlie this proceeding. What different commissions, acting in different times recommended under different factual circumstances is completely irrelevant to the proceedings at hand.

4. *The CJCE should not be required to testify to general procedures.*

Finally, the CJCE objects to producing a witness to testify to bullet point numbers 1, 2, 3, 5, 7 and 8. Greatly simplified, these designations request that a witness appear and testify to the formation and composition of I-panels and A-panels and to the internal workings and operations of the CJCE. Judge Neely asserts that this discovery will lead to admissible evidence, but does not state how or what relevant evidence might be discovered.

To the extent that these matters are governed by the Rules, the Rules are matters of public record and speak for themselves. There is no point to the examination. To the extent that the examination proposes to go beyond the proscriptions set forth in the Rules, inevitably, it will lead to examination regarding the internal workings of the Commission which, once again, is protected by the

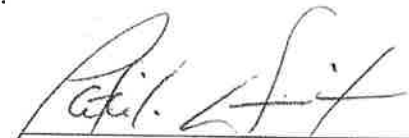
confidentiality requirements of Rule 22(a). Absent some demonstration of the relevance of these topics, the deposition should not proceed.

5. *Conclusion.*

The issue in this proceeding is not whether the Commission's procedures are proper, or whether the Commission followed them or what the CJCE has done in the past. The issue is whether Judge Neely violated the Canons of Judicial ethics. Given that she has admitted to the statements made in a newspaper in general circulation in her county, this is not a discovery case. It is extremely unlikely that prodding Commission members in a 30(b)(6) deposition will lead to a defense in this proceeding.

For the reasons set forth above, the CJCE requests the hearing officer enter his order that the Rule 30(b)(6) deposition not proceed, or in the alternative, that the examination be limited to matters which are non-confidential, non-privileged and within the proper scope of discovery.

DATED this 26 day of August, 2015.



Patrick Dixon (Wyo. Bar #5-1504)  
104 S. Wolcott, Suite 600  
Casper, Wyoming 82601  
(307) 234-7321  
(307) 234-0677 (facsimile)  
Disciplinary Counsel

**CERTIFICATE OF SERVICE**

I, Patrick Dixon, do hereby certify that on the 26 day of August, 2015, I served the above and foregoing **CJCE's Reply to THE HONORABLE RUTH NEELY'S RESPONSE TO THE COMMISSION'S MOTION FOR PROTECTIVE ORDER** via email or U.S. mail, postage prepaid, as noted below:

**VIA EMAIL dobylaw@embarqmail.com**

Herbert K. Doby  
Attorney at Law  
P.O. Box 130  
Torrington, Wyoming 82240

**VIA EMAIL kconnelly@adflegal.org**

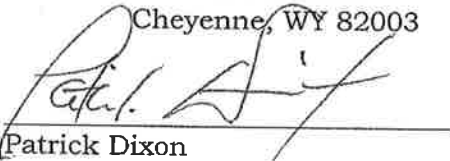
James A. Campbell  
Kenneth J. Connelly  
Douglas G. Wardlow  
Alliance Defending Freedom  
15100 N. 90<sup>th</sup> Street  
Scottsdale, Arizona 85260

**VIA orchard@spencelawyers.com**

Melvin C. Orchard, III  
Presiding Officer/Hearing Officer  
The Spence Law Firm, LLC  
Spence & McCalla  
P.O. Box 548  
Jackson, Wyoming 83001-0548

**VIA U.S. MAIL**

Wendy Soto, Executive Director  
Commission on Judicial Conduct and  
Ethics  
P.O. Box 2645  
Cheyenne, WY 82003

  
Patrick Dixon

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 )

COMMISSION ON JUDICIAL CONDUCT  
AND ETHICS  
No. 2014-27 Official Record

FILED  
Date: 8/31/15  
Wendy J. Soto

---

**AMENDED NOTICE OF COMMENCEMENT OF FORMAL PROCEEDINGS**

---

To: Honorable Ruth Neely  
Municipal Court Judge  
City of Pinedale  
P.O. Box 1386  
Pinedale, Wyoming 82941

A. *Factual Background.*

1. Judge Ruth Neely is a Municipal Court Judge, presiding over the Municipal Court of the Town of Pinedale, Wyoming. Judge Neely holds her position pursuant to the provisions of Wyoming Statutes § 5-6-101, *et seq.*, and Chapter 23 of the Municipal Code of the Town of Pinedale. Judge Neely has served as a Municipal Judge for approximately 21 years.

2. In 2001 Judge Neely was appointed Magistrate by then Circuit Court Judge John Crow. The purpose of this appointment was to confer authority upon Judge Neely to perform marriage ceremonies in accordance with Wyoming Statute § 20-1-106. Upon his appointment to the bench, Circuit Court Judge Curt A. Haws continued Judge Neely's appointment in the same

capacity. Since her appointment in 2001, Judge Neely has performed numerous civil marriage ceremonies in her capacity as Circuit Court Magistrate.

3. On October 17, 2014, in the case of *Guzzo v. Mead*, 2014 WL 5317797 (D.Wyo.2014), the United States District Court for the District of Wyoming, following established Tenth Circuit Court of Appeals precedence, determined that same sex couples enjoyed the same constitutional right to participate in civil marriage as heterosexual couples. Judge Skavdahl's ruling was not appealed and became the law of the state of Wyoming the following Monday, October 20, 2014.

4. Sometime during the week of December 8, 2014, Judge Neely was contacted by Ned Donovan, a reporter for the local papers in Sublette County, Wyoming. Judge Neely participated in an interview, or at least a conversation with Donovan on the subject of same sex marriage. During the course of the conversation or the interview, Judge Neely informed Donovan that she would be unable to perform same sex marriages as a result of her religious beliefs. Judge Neely was quoted by Donovan as saying "When law and religion conflict, choices have to be made. I have not yet been asked to perform a same sex marriage."

5. The substance of Judge Neely's conversation or interview with Donovan, including the quoted language appeared in the Sublette Examiner on December 11, 2014 and may have appeared in other local publications in that timeframe.



6. As a result of these publications and conversations with Judge Neely, Judge Haws suspended Judge Neely's authority to perform marriage ceremonies on or about January 15, 2015.

7. In the meantime, Judge Neely, with the advice of Judge Haws, voluntarily refrained from performing marriage ceremonies for any couples, heterosexual or otherwise, and the last marriage ceremony performed by Judge Neely occurred on December 13, 2014.

8. In response to inquiries from this Commission, Judge Neely has admitted to making the comments attributed to her in the newspaper article and has reiterated her position with respect to same sex marriages, citing her religious beliefs and her First Amendment rights, presumably to the free exercise of religion.

9. On April 27, 2015 the Honorable Judge Ruth Neely's counsel Herbert K. Doby filed the *Motion to Appear Pro Hac Vice* on behalf of Kenneth J. Connolly, Douglas G. Wardlow, and James A. Campbell. See *Motion to Appear Pro Hac Vice*, April 27, 2015. The *Verified Answer*, which indicated that James A. Campbell, Kenneth J. Connelly, and Douglas G. Wardlow work for the Alliance Defending Freedom, was filed concurrently with the *Motion to Appear Pro Hac Vice*. *Id.*; see also *Verified Answer*, April 27, 2015. The *Order Granting Motion to Appear Pro Hac Vice* was entered June 10, 2015. *Order Granting Motion to Appear Pro Hac Vice*, June 10, 2015.

10. The Alliance Defending Freedom<sup>1</sup> (hereinafter, "ADF") is an organization that discriminates and advocates for the discrimination of persons based upon sexual orientation and actively pursues a political agenda that includes opposing marriage equality. See generally, <http://www.adflegal.org>. The ADF describes itself as, "an alliance-building legal organization that advocates for the right of people to freely live out their faith." See, <http://www.adflegal.org/about-us/faq>. Its mission statement is, "to keep the doors open for the Gospel by advocating for religious liberty, the sanctity of life, and marriage and family." *Id.* The ADF solicits support for its political agenda on its website, solicits donations in support of its political causes and allows users to share via Facebook ADF's political message. (*Id.*, see also, <http://www.adflegal.org/issues/marriage/redesigning-society>).

B. *Code of Judicial Conduct.*

1. The following provisions of the Wyoming Code of Judicial Conduct are implicated by the facts recited above:

**Canon 1. A Judge Shall Uphold the Integrity and Independence of the Judiciary.**

A judge shall uphold and promote the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

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<sup>1</sup> The ADF specializes in legal work where it believes religious freedom is being violated. See, <http://www.adflegal.org/about-us>. The ADF president, Alan Sears, co-wrote a fiercely anti-gay book, called *The Homosexual Agenda: Exposing the Principal Threat to Religious Freedom Today*. See, <http://www.adflegal.org/detailspages/biography-details/alan-sears>.

**Rule 1.1. Compliance with the Law.**

A judge shall comply with the law, including the Code of Judicial Conduct.

**Rule 1.2. Promoting Confidence in the Judiciary.**

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

**Canon 2. A judge shall perform the duties of judicial office.**

A judge shall perform the duties of judicial office impartially, competently, and diligently.

**Rule 2.2. Impartiality and Fairness.**

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

**Rule 2.3. Bias, Prejudice and Harassment.**

(A) A judge shall perform the duties of judicial office, including administrative duties without bias or prejudice.

(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, socioeconomic status, or political affiliation, and shall not prevent court staff, court officials, or others subject to the judge's direction and control to do so. (Emphasis added.)

**Rule 2.4 External Influences on Judicial Conduct**

(A) A judge shall not be swayed by public clamor or fear of criticism.

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

**Canon 3. A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.**

**Rule 3.6 Affiliation with Discriminatory Organizations**

(A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.

(B) A judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices invidious discrimination on one or more of the basis identified in paragraph (A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of the Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

2. Judge Neely's stated position with respect to same sex marriage and her subsequent engagement of James A. Campbell, Kenneth J. Connelly, Douglas G. Wardlow of the Alliance Defending Freedom Organization, and her affiliation with the Alliance Defending Freedom Organization, 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.

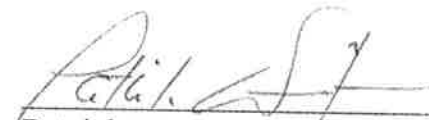
C. *Notification of Members of Adjudicatory Panel.*

1. The following are members of the Adjudicatory Panel: Mel Orchard, Presiding Officer, Honorable Wendy Bartlett and Barbara Dilts.

D. *Advisement.*

1. Pursuant to Rule 8(b) of the Rules Governing the Commission on Judicial Conduct and Ethics, Judge Neely is hereby advised that she shall have twenty (20) days from the date of service of the instant *Amended Notice of Commencement of Formal Proceedings* within which to file a written, verified answer to the allegations above made. Her response, if any, should be served on the undersigned counsel for the CJCE.

DATED this 28 day of August, 2015.

  
Patrick Dixon (Wyo. Bar #5-1504)  
104 S. Wolcott, Suite 600  
Casper, Wyoming 82601  
(307) 234-7321  
(307) 234-0677 (facsimile)  
Disciplinary Counsel

**CERTIFICATE OF SERVICE**

I, Patrick Dixon, do hereby certify that on the 28 day of August, 2015, I served the above and foregoing ***Amended Notice of Commencement of Formal Proceedings*** via email or U.S. mail, postage prepaid, as noted below:

**VIA EMAIL dobylaw@embarqmail.com**

Herbert K. Doby  
Attorney at Law  
P.O. Box 130  
Torrington, Wyoming 82240

**VIA EMAIL kconnelly@adflegal.org**


James A. Campbell  
Kenneth J. Connelly  
Douglas G. Wardlow  
Alliance Defending Freedom  
15100 N. 90<sup>th</sup> Street  
Scottsdale, Arizona 85260

**VIA orchard@spencelawyers.com**

Melvin C. Orchard, III  
Presiding Officer/Hearing Officer  
The Spence Law Firm, LLC  
Spence & McCalla  
P.O. Box 548  
Jackson, Wyoming 83001-0548

**VIA U.S. MAIL**

Wendy Soto, Executive Director  
Commission on Judicial Conduct and Ethics  
P.O. Box 2645  
Cheyenne, WY 82003

  
Patrick Dixon

**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

) COMMISSION ON JUDICIAL  
) CONDUCT AND ETHICS  
) COMMISSION ON JUDICIAL CONDUCT  
) No. 2014-27 AND ETHICS  
) Official Record  
) FILED  
) Date: 8/31/15  
) Wendy J. Soto

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**THE HONORABLE RUTH NEELY'S SURREPLY IN OPPOSITION  
TO THE COMMISSION'S MOTION FOR PROTECTIVE ORDER**

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The Commission seeks the most drastic possible sanction against Judge Neely: removing her from her position as both a Circuit Court Magistrate and Municipal Town Judge. Yet at the same time, the Commission seeks to insulate itself from a routine deposition, arguing that "this is not a discovery case" solely because Judge Neely has admitted making statements about her religious beliefs regarding marriage. See Commission's Reply to the Honorable Ruth Neely's Response to the Commission's Motion for Protective Order ("Reply") at 7. But Judge Neely has a right under the Wyoming Rules of Civil Procedure and the Commission Rules to discover facts that are relevant to her defenses, including:

- whether the Commission has applied the Code of Judicial Conduct in a manner that discriminates based on viewpoint or content in violation of Judge Neely's constitutional rights;
- whether the Commission has applied the Code of Judicial Conduct in a manner that imposes a religious test in violation of Judge Neely's constitutional rights;

- whether the Commission has deprived Judge Neely of her constitutional right to the free exercise of religion by applying the Code of Judicial Conduct in a manner that is not neutral or generally applicable; and
- whether the Commission's initiation and continuing prosecution of this matter against Judge Neely violates her due process rights under the Wyoming and United State Constitutions.

When constitutional rights hang in the balance, facts regarding these issues are routinely discoverable, and the Commission's efforts to shield itself from deposition are unpersuasive. It therefore should be required to submit to the 30(b)(6) deposition as noticed by Judge Neely.

### Argument

#### **I. The Commission is Subject to Rule 30(b)(6).**

In its Reply, the Commission tries to support with legal authority its claim that it need not submit to a Rule 30(b)(6) deposition because it is not a "governmental agency" under the rule. *See* Reply at 1-3. But its purported authority is inapposite.

The Commission claims that "[u]nder Wyoming law, a governmental *agency* is defined as . . . 'any authority, bureau, board, commission, committee, or sub-agency of the state, a county, a municipality or other political subdivision which is created by or pursuant to the Wyoming Constitution, statute or ordinance, other than the state legislature or the judiciary.'" Reply at 2 (quoting Wyo. Stat. § 16-4-402).<sup>1</sup> But this definition of "governmental agency" does not apply in the Rule 30(b)(6) context because, by its own terms, that definition applies only to the Wyoming Public Meetings Act. *See* Wyo. Stat. § 16-4-402 ("As used in *this act* . . . 'Agency' means . . .") (emphasis added). The Commission's argument is thus baseless, given that courts

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<sup>1</sup> In proffering this particular definition of "governmental agency," the Commission undermines arguments made in its Motion. As Judge Neely established in her Response to the Commission's Motion, there is no significance to the label "commission" or the fact that the Commission was created by the Wyoming Constitution. *See* Judge Neely's Response at 4. Indeed, the Commission's chosen definition of "agency" encompasses "commission[s]" and other governmental entities "created by or pursuant to the Wyoming Constitution [or] statute." Wyo. Stat. § 16-4-402.



may not “enlarge, stretch, expand, or extend a statute to matters that do not fall within its express provisions,” *Cheyenne Newspapers, Inc. v. Bldg. Code Bd. of Appeals of City of Cheyenne*, 2010 WY 2, ¶ 9, 222 P.3d 158, 162-63 (Wyo. 2010) (rejecting an attempt to import a statutory definition from another context, noting that the statutory references were “unhelpful, at best, and misleading, at worst”); *Worker’s Comp. Claim of Decker v. State ex rel. Wyoming Med. Comm’n*, 2008 WY 100, ¶ 16, 191 P.3d 105, 118 (Wyo. 2008) (“We presume that the legislature acts intentionally when it uses particular language in one statute, but not in another”).<sup>2</sup>

Moreover, the Commission’s attempt to analogize itself to the judiciary is unavailing. *See* Reply at 2. Throughout these proceedings, the Commission has functioned (and will function) in several capacities, which include prosecutorial, investigative, administrative, and adjudicative roles. It is only with respect to the Commission’s non-adjudicatory (i.e., non-judicial) tasks that Judge Neely seeks this 30(b)(6) deposition. Thus, the Commission’s fixation on its adjudicatory role is irrelevant.

Notably, the Commission’s position is particularly problematic because *it is the complaining party here*, the one that brought this proceeding against Judge Neely on its own motion and without formal complaint from any Wyoming citizen, and the one that seeks Judge Neely’s removal from the bench. And federal courts have routinely held that governmental agencies must submit to 30(b)(6) depositions, particularly when the agencies themselves initiate the action in question, as occurred here. *See, e.g., S.E.C. v. McCabe*, No. 2:13-CV-00161-TS-PMW, 2015 WL 2452937, at \*3 (D. Utah May 22, 2015) (denying a protective order sought by the S.E.C. and stating that “Rule 30(b)(6) expressly applies to a government agency and provides

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<sup>2</sup> The Commission argues that it “*should be* entitled to the same freedom from inquiry under Rule 30(b)(6)” that “[j]udicial and quasi-judicial bodies” are entitled to under the Wyoming Public Meetings Act and the Wyoming Public Records Act. *See* Reply at 2-3 (emphasis added). By arguing that it “*should be* entitled” to this protection, the Commission effectively admits that its proffered statutory definition does not apply here.

neither an exemption from Rule 30(b)(6), nor special consideration concerning the scope of discovery, especially when [the agency] voluntarily initiates an action”) (quotation marks omitted); *E.E.O.C. v. Pointe at Kirby Gate, LLC*, 290 F.R.D. 89, 91 (W.D. Tenn. 2003) (ordering the plaintiff E.E.O.C. to “designate one or more persons to answer questions on behalf of the [agency] on the topics identified in the defendants’ notice of deposition,” and rejecting the argument that “the attorney-client, work product, or deliberative process privileges” were sufficient to quash a 30(b)(6) deposition).<sup>3</sup> Even members of the judiciary must submit to 30(b)(6) depositions when they are parties to an action and the noticed depositions do not seek the “motivations or thought processes” behind a judicial ruling. *Prakel v. Indiana*, No. 4:12-CV-45-SEB-WGH, 2013 WL 3287691, at \*7 (S.D. Ind. June 28, 2013). Therefore, the Commission’s attempt to avoid Rule 30(b)(6) by labeling itself a judicial or quasi-judicial body must fail.

The cases that the Commission cites do not alter this conclusion. For example, *Adkins v. Kansas Commission on Judicial Qualifications*, No. 11-4109-SAC, 2011 WL 5024346 (D. Kan. Oct. 20, 2011), and *McKeown v. N.Y. State Commission on Judicial Conduct*, 377 F. App’x 121 (2d Cir. 2010), conclude that that judicial commissions are entitled to judicial immunity. But Judge Neely is not pursuing a civil action against the Commission or its members; thus *Adkins* and *McKeown* are irrelevant. Nor does *First Amendment Coalition v. Judicial Inquiry & Review Board*, 784 F.2d 467 (3d Cir. 1986), support the Commission’s Motion. That case involved an attempt by members of the public—specifically, the media—to access confidential documents possessed by a judicial commission. That is very different from what is at issue here—namely, an attempt by a party (a judge) facing disciplinary charges to obtain information that she needs from the prosecuting agency in order to evaluate and establish her affirmative defenses. *First*

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<sup>3</sup> See also *S.E.C. v. Collins & Aikman Corp.*, 256 F.R.D. 403, 418 (S.D.N.Y. 2009) (holding that “when a government agency initiates litigation, it must be prepared to follow the same discovery rules that govern private parties (albeit with the benefit of additional privileges such as deliberative process and state secrets)”).

*Amendment Coalition* thus does not speak to the issues presented here. Finally, the litigant in *Worker's Compensation Claim of Decker v. State ex rel. Wyoming Med. Commission*, 2008 WY 100, ¶ 8, 191 P.3d 105, 113 (Wyo. 2008), argued that an administrative agency violated due-process principles because it did not open its adjudicatory deliberations to the public. But Judge Neely does not challenge the Commission's ability to conduct its adjudicatory deliberations in private. Rather, she seeks standard discovery concerning the Commission's prosecutorial, investigatory, and administrative tasks. Accordingly, none of the cases that the Commission cites advance its arguments.

In sum, "[c]ourts will not prohibit depositions except in extraordinary circumstances," *Pointe at Kirby Gate*, 290 F.R.D. at 90, and an order doing so "would likely be in error." *Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir. 1979). Such error would be especially unjust here because the Commission has on its own motion brought these proceedings against Judge Neely.

## **II. The Confidentiality Provisions of Commission Rule 22 Do Not Shield Discovery.**

The Commission, citing Commission Rule 22, objects on confidentiality grounds to the fourth, sixth, and ninth topics designated for examination in Judge Neely's Rule 30(b)(6) deposition notice. *See* Reply at 3-4. The Commission's basis for resisting discovery under Commission Rule 22 is fatally flawed, however, because it conflates the question of whether information must be kept *confidential* with the question of whether the information is *discoverable*. "The burden of establishing entitlement to nondisclosure rests with the party resisting disclosure and not the party seeking it." *Greenwood v. Wierdsma*, 741 P.2d 1079, 1089 (Wyo. 1987). Because the Commission has failed to demonstrate a basis for resisting the discovery of information that may be confidential under Commission Rule 22, the Commission's Motion should be denied.

The Commission asserts that, pursuant to Commission Rule 22, Judge Neely may waive confidentiality as to the subject matter of these proceedings, but contends that a “broader right of confidentiality . . . belongs to the [Commission].” Reply at 4.<sup>4</sup> The Commission’s proceedings must “remain confidential,” the Commission contends, in order for it to “function properly.” *Id.* But through this 30(b)(6) deposition, Judge Neely is not seeking to lift the veil of *confidentiality*. Rather, she seeks *discovery* of information relevant to her defenses. Any information Judge Neely obtains by deposing the Commission will be used in these proceedings as necessary for Judge Neely’s defense, and thus confidentiality will not be broken by permitting Judge Neely to conduct the noticed 30(b)(6) deposition. In short, there is simply no need to curtail discovery in order to safeguard confidentiality. But there is a compelling need for Judge Neely to discover facts essential to her defense.

In addition, as has been discussed above, the Commission’s argument that failing to issue a protective order would be akin to violating the confidentiality of “a judge or jury’s deliberations” makes no sense. Reply at 4. The topics designated for examination in Judge Neely’s Rule 30(b)(6) deposition notice do not seek any information related to the Adjudicatory Panel’s deliberations. Rather, the topics designated for examination seek information about the procedures and criteria related to the commencement of these proceedings and the (non-judicial) administration of the Commission’s business, including the convening of the Investigatory Panel, the selection of panel members, and the factors that impact the decision to initiate formal proceedings. The topics were designated for examination because information about the manner in which the Commission applies and enforces the Code of Judicial Conduct is relevant to Judge Neely’s as-applied constitutional defenses. *See supra* at 1-2.

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<sup>4</sup> While it is not necessary to reach the issue here, the Commission’s broad view of confidentiality is highly questionable.

In short, confidentiality will remain intact pursuant to Commission Rule 22 regardless of whether Judge Neely is permitted to conduct the noticed 30(b)(6) deposition. In contrast, issuing the requested protective order would greatly prejudice Judge Neely's ability to obtain relevant information necessary to mount a complete defense. Accordingly, the Commission's motion should be denied.<sup>5</sup>

**III. The Commission Waived Its Purported Right to Shield Discovery of Information Pertaining to the Already-Disclosed Meetings of the Investigatory Panel.**

Additionally, the Commission has waived any purported privilege that it might have had to the discovery of information concerning the already-disclosed meetings of the Investigatory Panel. *See* Affidavit of Kenneth J. Connelly in Support of Surreply ("Connelly Aff.") at Exhibit I (Commission Response to Request for Production of Documents No. 11) (noting the production of "non-privileged audio recordings of I-Panel meetings"). In reply, the Commission asserts that no waiver could have occurred because the confidentiality provisions of Commission Rule 22 are "not waivable." Reply at 4. Yet as explained above, the confidentiality that Commission Rule 22 requires is not relevant to resolving this Motion. Judge Neely does not argue here that the Commission waived confidentiality and thus that information disclosed during these proceedings can be conveyed outside of these proceedings. Instead, she argues that the Commission waived any ability it may have had to bar discovery concerning certain Investigatory Panel meetings when it produced audio recordings of those meetings.

The Commission, moreover, unhelpfully cites cases indicating that jurisdictional defenses based on statutes of limitations or a lack of subject-matter jurisdiction may not be waived. But

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<sup>5</sup> Moreover, the requested protective order is not necessary to safeguard privileged information. Objections based on privilege or related to the scope of discovery are properly made by the Commission's counsel during the course of the deposition. *See McCabe*, 2015 WL 2452937, at \*4 ("To the extent Defendant's examination strays into truly privileged or irrelevant areas, the court is confident that . . . counsel is familiar with the appropriate procedure for objecting at a deposition.").

unlike those jurisdictional defenses, evidentiary privileges like what the Commission seeks to assert here are waivable. See *United States v. Ryans*, 903 F.2d 731, 741 n.13 (10th Cir. 1990) (stating that “the confidentiality of communications covered by the [attorney-client] privilege must be jealously guarded by the holder of the privilege lest it be waived”).

The Commission also contends that no waiver in fact occurred here. Citing *Jensen v. Fremont Motors Cody, Inc.*, 58 P.3d 322, 328 (Wyo. 2002), the Commission argues that its production of the audio recordings does not constitute “an express, voluntary, and intentional relinquishment of a known right.” Reply at 5. But *Jensen* does not pertain here, for at least two reasons. First, the employer in *Jensen* raised waiver as a substantive defense against a claim for underpayment of wages. 58 P.3d at 327. The case did not involve a waiver of an evidentiary privilege during discovery. Second, the basis for the employer’s waiver argument in *Jensen* was its former employee’s failure to act: the employee had accepted incorrect paychecks for many months without complaint and only later asserted a claim for underpayment of wages. *Id.* The Court held that a claim may not be waived based solely on the silence or inaction of the employee. *Id.* at 327-28. Here, by contrast, the Commission waived its alleged evidentiary privilege through its voluntary and intentional disclosure of information about Investigatory Panel meetings: specifically, the Commission knowingly produced audio recordings of two Investigatory Panel meetings, expressly stating that the recordings are “non-privileged.” See Connelly Aff. at Exhibit 1 (Commission Response to Request for Production of Documents No. 11) (noting the production of “non-privileged audio recordings of I-Panel meetings”). Having voluntarily produced recordings of Investigatory Panel meetings, the Commission should not now be able to prevent Judge Neely from examining the Commission about the contents of those very recordings. See *First Wyoming Bank, N.A., Jackson Hole v. Contl. Ins. Co.*, 860 P.2d 1064,

1088 (Wyo. 1993) (holding that “[p]rivilege is waived when the party claiming the privilege releases the document”), *opinion vacated in part on other grounds on reh'g*, 860 P.2d 1094 (Wyo. 1993) (citing *People v. Calandra*, 120 Misc. 2d 1059, 467 N.Y.S.2d 141 (N.Y. Sup. Ct. 1983); *Freeman v. Bianchi*, 820 S.W.2d 853 (Tex. Ct. App. 1991)).

**Conclusion**

For the foregoing reasons, the Presiding Officer of the Adjudicatory Panel should deny the Commission’s Motion for Protective Order.

Dated: August 31, 2015



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Kenneth J. Connelly\*

James A. Campbell\*  
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*Attorneys for Respondent*  
*\* Admitted Pro Hac Vice*

**BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS  
STATE OF WYOMING**

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

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**AFFIDAVIT OF KENNETH J. CONNELLY IN SUPPORT OF RESPONDENT THE  
HONORABLE RUTH NEELY'S SURREPLY TO THE COMMISSION'S  
MOTION FOR PROTECTIVE ORDER**

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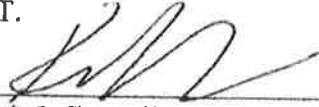
I, Kenneth J. Connelly, after being duly sworn, declare the following:

1. I am one of the attorneys representing Respondent, the Honorable Ruth Neely ("Judge Neely"), in the above-captioned matter. I submit this affidavit in support of Judge Neely's Surreply to the Commission's Motion for Protective Order.
2. Attached hereto as Exhibit 1 is a true and correct copy of the Commission on Judicial Conduct and Ethics's Response to Judge Neely's Document Requests, dated July 27, 2015, produced by the Commission during discovery.

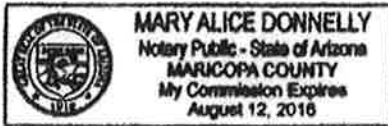
I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

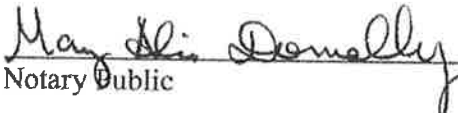


FURTHER, AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
Kenneth J. Connelly

SUBSCRIBED AND SWORN TO before me this 31 day of August, 2015, by Kenneth J. Connelly.



  
\_\_\_\_\_  
Notary Public

My commission expires: Aug 12, 2016

# EXHIBIT

1

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 RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS**

COMES NOW the Commission on Judicial Conduct and Ethics, by and through its attorney Patrick Dixon, and responds to Judge Neely's Request for Production of Documents 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 Request for Production of Documents *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:

**REQUEST FOR PRODUCTION NO. 1:** All documents that concern the facts or circumstances of the incident giving rise to this matter or that relate to any of the

allegations in the Notice or the responses or affirmative defenses in Judge Neely's Answer.

**RESPONSE:** This request is objected to as vague and over broad. Without waiving the objection, attached hereto are the following documents:

- a. December 11, 2014 printout captioned "Top Stories"
- b. Sublette Examiner Article modified Thursday, December 11, 2014
- c. January 12, 2015 inquiry to Judges Neely and Haws
- d. January 17, 2015 response from Judge Haws
- e. February 7, 2015 response from Judge Neely
- f. December 22, 2014 email from Ana Cuprill to Wendy Soto

**REQUEST FOR PRODUCTION NO. 2:** All documents that tend to support or refute the claims and assertions made in the Notice or the Answer.

**RESPONSE:** See preceding response and attached documents.

**REQUEST FOR PRODUCTION NO. 3:** All documents relied upon, referred to, identified in, or reviewed while compiling the response to Judge Neely's First Set of Interrogatories to the Wyoming Commission on Judicial Conduct and Ethics.

**RESPONSE:** See preceding response and attached documents.

**REQUEST FOR PRODUCTION NO. 4:** All documents referring or relating to Judge Neely that concern the subject matter of this proceeding.

**RESPONSE:** In addition to the documents referenced in Response No. 1, see attached I-Panel file.

**REQUEST FOR PRODUCTION NO. 5:** All documents referring or relating to Ned Donovan, Judge John Crow, Judge Curt A. Haws, or John Burman that concern the subject matter of this proceeding.

**RESPONSE:**

Ned Donovan: *See* attached interview notes.

Judge John Crow: There are no documents responsive to this request.

Judge Curt A. Haws: *See* response to 1(c) and (d).

John Burman: *See* attached letters dated January 29, 2015 and March 23, 2015.

**REQUEST FOR PRODUCTION NO. 6:** All documents provided to Wyoming state judges, judicial officials, or magistrates regarding any adjustments to their respective marriage-related duties in the wake of the decision in *Guzzo v. Mead*, 2014 WL 5317797 (D.Wyo.2014), including all such documents issued by the Wyoming Commission of Judicial Conduct and Ethics, the Judicial Ethics Advisory Committee, or any other official Wyoming government body.

**RESPONSE:** *See* attached newsletter published by the Center on Judicial Ethics. This newsletter is available to all Wyoming judges, Judge Neely included, on a bi-weekly basis and provides general information on the judiciary's duties. The Commission has made no attempt to retrieve and produce all of these newsletters as historical newsletters are equally available to the Judge and the Commission is willing to assist if necessary. Except for this type of publication, no other document responds to this request.

**REQUEST FOR PRODUCTION NO. 7:** All documents referring or relating to any conversation between Judge Neely and Ned Donovan.

**RESPONSE:** Except for those documents identified in response to Request 1(a) and (b), the Commission is unaware of any other document responsive to this request.

**REQUEST FOR PRODUCTION NO. 8:** All documents written by or on behalf of Judge Neely, Ned Donovan, Judge John Crow, and Judge Curt A. Haws that concerning the subject matter of this proceeding.

**RESPONSE:** See preceding responses.

**REQUEST FOR PRODUCTION NO. 9:** All documents reflecting, referencing, or relating to any communication between any person (including Judge Neely and any of the Commission's representatives, employees, or agents) and Ned Donovan.

**RESPONSE:** Except for the newspaper articles identified in Request 1(a) and (b), there are no documents responsive to this request.

**REQUEST FOR PRODUCTION NO. 10:** All documents reflecting, referencing, or relating to any communication between any person (including Judge Neely and any of the Commission's representatives, employees, or agents) and Judge Curt A. Haws.

**RESPONSE:** This request is objected to as calling for the disclosure of attorney-work product. Without waiving the objection, see response to Request 1(c) and (d).

**REQUEST FOR PRODUCTION NO. 11:** All documents that concern or relate to any investigation of Judge Neely conducted by the Commission, including but not limited to any investigation that concerns the subject matter of this proceeding. Include all documents (including audio or video recordings) acquired, collected, or created by the Commission in the course of its investigation in this proceeding, including but not

limited to all audio or video recordings (or transcripts) of any interview or discussion with any individual who the Commission talked to in the course of its investigation in this proceeding.

**RESPONSE:** This request is objected to as calling for the disclosure of privileged communications and attorney work product. Without waiving the objection, see attached I-Panel file and non-privileged audio recordings of I-Panel meetings. The audio recordings will be forwarded by separate email.

**REQUEST FOR PRODUCTION NO. 12:** All documents that concern or relate to the appointment, retention, or reappointment of Judge Neely as both a court magistrate or a municipal court judge.

**RESPONSE:** The Commission has made reasonable inquiry of Judge Haws concerning documents that relate to the appointment, retention or reappointment of Judge Neely. At the time of this response, no such documents have been located.

**REQUEST FOR PRODUCTION NO. 13:** All documents that concern, mention, discuss, refer to, relate to, support or attempt to refute Judge Neely's affirmative defenses.

**RESPONSE:** This request is objected to as being vague and ambiguous and calling for the disclosure of attorney work product. Without waiving the objection, any document produced in response to preceding or succeeding requests would be responsive to this request.

**REQUEST FOR PRODUCTION NO. 14:** All documents concerning any investigation or formal proceeding that the Commission has pursued against any judge wherein the

judge alleged that he or she was protected by a federal or state constitutional speech- or religion-related defense; for each relevant instance, produce (at a minimum) the initiating documents such as a complaint or notice of commencement of formal proceedings; the documents in the investigative file; the findings of fact, conclusions of law, and any dissenting opinions issued by the Commission as part of its final adjudication; the Commission's ultimate recommendation to the Wyoming Supreme Court; and the Wyoming Supreme Court's final disposition of the matter.

**RESPONSE:** This request is objected to on the following grounds: (a) This request is objected to as violating the confidentiality provisions of Rule 22(a) as set forth above. Even if there were documents responsive to this request, the Commission would not produce any non-public document regarding any other Judge without an order from the Wyoming Supreme Court. (b) This request is over broad and unduly burdensome. As stated before, the Commission has thousands of files concerning complaints regarding other judges. It would be unduly burdensome to require the Commission to research each file to determine whether it might be responsive to this request. (c) To the extent this request asks for documents which are public records, those records are equally available to the Judge.

Without waiving these objections, and subject to the disclaimer set forth in subparagraph b above, the Commission is unaware of any document which would be responsive to this request.

**REQUEST FOR PRODUCTION NO. 15:** All documents that concern or relate to discipline of Wyoming judges by the Commission or the Wyoming Supreme Court upon the Commission's recommendation since 1995, including but not limited to



documents detailing or otherwise mentioning the allegations and the resulting discipline handed down by the Commission or the Wyoming Supreme Court.

**RESPONSE:** This request is objected to on the grounds of confidentiality pursuant to Rule 22(a). The Commission will not produce any non-public document relating to any other judge without an order of the Wyoming Supreme Court. This request is further objected to as being over broad as to time and unduly burdensome. Although, on reasonable inquiry, no public reprimands have been issued within the requested time period, it is conceivable that this may have occurred. Once again, it would be unduly burdensome to require the Commission to search its archives to accurately respond to the request in this regard.

Without waiving these objections, attached hereto are public records relating to the disciplines of Judges Schroeder, Crow and Lopez. Judge Neely is directed to those Supreme Court files for other documents which may have been filed of record.

**REQUEST FOR PRODUCTION NO. 16:** All documents that concern or relate to any complaints alleging sexual-orientation discrimination that have been filed with the Commission, including but not limited to documents detailing or otherwise mentioning the allegations, the investigation, and the final disposition by the Commission or the Wyoming Supreme Court.


**RESPONSE:** See response and objections to Request No. 14 above.

**REQUEST FOR PRODUCTION NO. 17:** All documents that the Commission plans to file as an exhibit with any dispositive motion that it might submit in this proceeding, that it plans to mark for identification or attempt to introduce into evidence at the

hearing in this proceeding, or that it anticipates using at the deposition of any witness in this proceeding.

**RESPONSE:** The Commission will offer any document produced in response to any preceding request, except Request No. 15 as an exhibit at the hearing of the matter. The Commission will designate additional exhibits in accordance with the Hearing Officer's Scheduling Order.

DATED this 27 day of July, 2015.


  
Patrick Dixon (Wyo. Bar #5-1504)  
104 S. Wolcott, Suite 600  
Casper, Wyoming 82601  
(307) 234-7321  
(307) 234-0677 (facsimile)  
Disciplinary Counsel

**CERTIFICATE OF SERVICE**

I, Patrick Dixon, do hereby certify that on the 27 day of July, 2015, I served the above and foregoing **CJCE's Response to Request for Production of Documents** by placing a true and correct copy in the United States mail, duly postmarked and addressed to:

Herbert K. Doby  
Attorney at Law  
P.O. Box 130  
Torrington, Wyoming 82240

James A. Campbell  
Kenneth J. Connelly  
Douglas G. Wardlow  
Alliance Defending Freedom  
15100 N. 90<sup>th</sup> Street  
Scottsdale, Arizona 85260

  
Patrick Dixon

**CERTIFICATE OF SERVICE**

I hereby certify that on the 31st day of August, 2015, I served the foregoing Surreply and Affidavit of Kenneth J. Connelly by electronic mail and by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

Patrick Dixon, Esq.  
Dixon & Dixon, LLP  
104 South Wolcott Street, Suite 600  
Casper, WY 82601  
pdixn@aol.com



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Kenneth J. Connelly

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 )

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**ORDER ON THE MOTION FOR PROTECTIVE ORDER**

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The Presiding Officer of the Adjudicatory Panel, having considered the Commission's Motion for Protective Order, and having read the parties' submissions and heard the oral argument of counsel during a hearing on the motion held September 1, 2015, and otherwise being advised in the premises hereby finds as follows:

- 1) Rule 30 (b)(6) applies generally to the issues herein as it relates to the non-adjudicatory aspects of the Commission;
- 2) Items that may be confidential, may also be discoverable while maintaining the cloak of confidentiality;
- 3) While counsel for Respondent Neely could not adequately articulate either in writing or during argument the direct link between the affirmative defenses and the requested discovery - giving counsel for Respondent Neely every benefit of doubt, discovery of certain items might yield admissible evidence relative to the affirmative defenses outlined by counsel in it is pleadings and specifically Exhibit A to Respondent's 30(b)(6) Notice of Deposition.
- 4) Specifically, Respondent's Surreply set forth four bullet points that remained as affirmative defenses justifying discovery as follows:
  - a. Whether the Commission has applied the Code of Judicial Conduct in a manner that discriminates based upon viewpoint or content in violation of Judge Neely's constitutional rights;
  - b. Whether the Commission has applied the Code of Judicial Conduct in a manner that imposes a religious test in violation of Judge Neely's constitutional rights;

c. Whether the Commission has deprived Judge Neely of her constitutional right to the free exercise of religion by applying the Code of Judicial Conduct in a manner that is not neutral or generally applicable;

d. Whether the Commission's initiation and the continuing prosecution of this matter against Judge Neely violate her due process rights under the Wyoming and United States Constitutions.

Taking those areas of inquiry, and considering the discovery requested, the Commission's Motion for Protective Order is hereby granted in part and denied in part as explained during the recorded hearing and as set forth below:

1. How the procedural and substantive rules are applied generally, and how the Commission applied the rules and procedures in this particular case are subjects for limited inquiry.

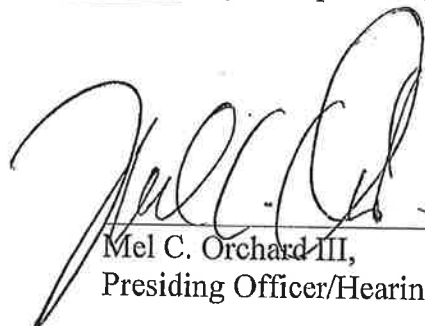
2. How the Commission assigns its investigatory panels and its adjudicatory panels are also areas into which Respondents may inquire.

3. The general history of judicial discipline recommended by the Commission may also be inquired upon.

4. Finally, a 30(b)(6) representative from the Commission may be deposed regarding the specific procedures, requirements, considerations, factors and criteria for appointment of the members of the Investigatory and Adjudicatory Panels.

The factors for deciding whether to file a Notice of Commencement has already been disclosed in the Investigatory Panel's recorded proceedings so no further discovery on that subject is warranted. Also, the Rules Governing the Commission and The Code of Judicial Conduct answer many of the other questions raised by Respondent and as such, are equally accessible to Respondent, whereby additional discovery is unnecessary.

SO ORDERED this 20<sup>th</sup> day of September, 2015.

  
Mel C. Orchard III,  
Presiding Officer/Hearing Officer