

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)

**CERTIFIED RECORD
VOLUME 2**

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Date: 10/30/15
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HONORABLE RUTH NEELY'S MOTION FOR SUMMARY JUDGMENT

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Respondent the Honorable Ruth Neely states the following undisputed material facts in support of her Motion for Summary Judgment.

Judge Neely's Public Service

Judge Neely has served as Pinedale Municipal Judge for approximately 21 years. Neely Aff. ¶ 3. She has been appointed and re-appointed to this position by four different mayors. *Id.* at ¶ 3. In her capacity as Pinedale Municipal Judge, Judge Neely hears all cases arising under the ordinances of Pinedale; those cases primarily involve traffic and parking violations, animal control, public intoxication, underage drinking, shoplifting, breach of the peace, general nuisances, and other similar matters. Neely Aff. ¶ 4; Pinedale Municipal Code, Chapter 23 (Connelly Aff., Ex. 1); Town of Pinedale, Wyoming, Municipal Court & Judge, Duties (Connelly Aff., Ex. 2).

Judge Neely has also served the community as a circuit court magistrate. She was originally appointed by then-County Judge John Crow in or around 2001 and was most recently reappointed in 2008 by Circuit Court Judge Curt Haws as a part-time magistrate with the authority to exercise the full array of powers permitted by Wyoming Statutes Section 5-9-212. Neely Aff. ¶ 5; Haws Dep. at 42-45, 125-26 (Connelly Aff., Ex. 3); 2008 Circuit Court Magistrate Appointment Letter for Judge

Neely (Connelly Aff., Ex. 4). These powers include the administration of oaths, the issuance of subpoenas, the issuance of search and arrest warrants, the conduct of bond hearings, and the performance of marriages. Wyo. Stat. § 5-9-212 (Connelly Aff., Ex. 5). With respect to this last power, Judge Neely is authorized to solemnize marriages under Wyoming Statutes Section 20-1-106, which provides that a “magistrate . . . *may* perform the ceremony of marriage in this state.” Wyo. Stat. § 20-1-106(a) (emphasis added) (Connelly Aff., Ex. 6).

Thus, Judge Neely, like all other circuit court magistrates, has discretionary authority to perform marriages, but she does not have a duty or obligation to solemnize marriages. Neely Aff. ¶ 6. Magistrates and other judges may decline to perform marriage ceremonies for a whole host of reasons—if they want to perform weddings only for close friends and family, if they want to reserve certain times of the week for family, or if the proposed wedding location is too far away in the judge’s opinion—and have not been disciplined for so acting. *See, e.g.*, Soto Dep. at 151-54 (Connelly Aff., Ex. 7); Haws Dep. at 62-63 (Ex. 3);¹ Smith Dep. at 41-44 (Connelly Aff., Ex. 8). In fact, even circuit court magistrates who inform their appointing authority that they do not wish to regularly entertain requests for marriages, but would rather consider only requests for personal friends or family, have not been disciplined. *See* Smith Dep. at 43-44 (Ex. 8). And when deciding whether, when, and how to perform weddings, circuit court magistrates have complete discretion in setting fees for that service. Haws Dep. at 68-69 (Ex. 3). While many do charge a set fee, others do not. *See* Haws Dep. at 68-69 (Ex. 3); Neely Dep. at 43-45 (Connelly Aff., Ex. 10).

Judge Neely is almost universally admired and respected for her character, faithful adherence to the law, and dedication to public service. *See* Jones Aff. ¶¶ 5, 6, 10, 12; Carlson Aff. ¶ 5; Wood Aff. ¶¶ 3-6; Eversull Aff. ¶¶ 2, 4, 5; Stevens Aff. ¶ 5; Haws Dep. at 50, 53, 56, 58-59

¹ All citations to “Ex.” refer to the exhibits attached to the Affidavits of Kenneth J. Connelly or Judge Neely, both of which have been filed in support of Judge Neely’s Motion for Summary Judgment.

(Ex. 3) (testifying that Judge Neely “has a strong, good character”); Smith Dep. at 34-35 (Ex. 8) (“My impression of Judge Neely was that she was a good judge, a wise woman. . . . I thought she was a good judge . . .”). In all her years as Pinedale Municipal Judge and as a circuit court magistrate, Judge Neely has never had a complaint filed against her with the Commission on Judicial Conduct and Ethics (the “Commission”), been disciplined by the Commission, or been accused of harboring or exhibiting bias, prejudice, or partiality by anyone who has appeared before her in court. *See* Commission’s Response to Judge Neely’s Requests for Admission Nos. 5, 6, & 9 (Connelly Aff., Ex. 9); Neely Aff. ¶ 11. Judge Haws, who supervises Judge Neely in her role as circuit court magistrate, confirmed that he never received any complaints about Judge Neely exhibiting bias or prejudice. Haws Dep. at 59 (Ex. 3). Indeed, Judge Neely has never had a bias or prejudice against, or otherwise treated unfairly, any individual who has appeared before her in her capacity as either a circuit court magistrate or a municipal judge. Wood Aff. ¶¶ 4-5; Jones Aff. ¶¶ 6, 11; Carlson Aff. ¶ 5; Stevens Aff. ¶ 5; Anderson Aff. ¶ 5; Neely Aff. ¶ 12.

Judge Neely’s judicial service has undeniably improved the community and the lives of many of those whom she has served. She truly cares about all the people who appear before her in court, and in deciding their cases, she seeks not only to ensure that justice is achieved, but also to help those individuals better themselves and the local community. Neely Aff. ¶ 17; Eversull Aff. ¶¶ 3-5. Judge Neely frequently orders community service as part of the sentences that she issues because she believes that community service helps to recompense for the wrong done, helps to reform the individual, and helps to make the community a better place. Neely Aff. ¶ 18.

Judge Neely has a particularly good track record dealing with juvenile offenders: time and again she has conscientiously, thoughtfully, and creatively guided them through the court process so that they come out better citizens than when they entered. *See* Wood Aff. ¶ 6; Jones Aff. ¶ 10; Eversull Aff. ¶ 3. On one occasion, for instance, Judge Neely discovered that one of two young

men appearing before her on a charge of underage possession of alcohol could not read. Neely Aff. ¶ 20. Judge Neely arranged for the offender who could read to teach the one who could not, with the help of reading specialists who would work with them regularly while they were in jail serving out their sentences. *Id.* The young man who could not read made considerable progress in learning to read over a period of four-and-a-half months, and Judge Neely eventually released both young men from jail prior to the time their sentences were set to expire, upon the condition that they continue to participate in the reading program. *Id.* After this experience, the young man who learned to read thanked Judge Neely for forcing him to take the initiative that he needed to make his life better. *Id.* He subsequently wrote a story about this experience, and in it, he thanked Judge Neely for what she had done for him. Trent Kynaston, *A Bad Situation Turned Good* (Neely Aff., Ex. 45).

Judge Neely's contributions to the community do not end with her service as Pinedale Municipal Judge or as a circuit court magistrate. According to Judge Haws, Judge Neely is someone who has "always answered a call for help." Haws Dep. at 50-52 (Ex. 3). In particular, when Judge Haws asked Judge Neely to serve as a member of the Steering Committee on the Sublette County Drug Treatment Court, she readily accepted because of her dedication to reducing crime in the community and promoting recovery and rehabilitation. *Id.*; Neely Aff. ¶ 14. And in 2008, when the Wyoming judiciary sought judges to help revise the Wyoming Code of Judicial Conduct, Judge Neely volunteered to serve on the Select Committee charged with that task. Neely Aff. ¶ 15; Neely Dep. at 50-52 (Ex. 10); 12/1/08 Letter from Chief Justice Barton Voigt to Judge Neely (Neely Aff., Ex. 44).

Judge Neely's Religious Beliefs and Practice

Judge Neely is a longtime member of the Lutheran Church, Missouri Synod (LCMS)—a Christian denomination—and has been an active parishioner at her local LCMS congregation, Our Savior's Lutheran Church in Pinedale, for the past 38 years. Neely Aff. ¶ 21. She has been a Sunday

School teacher for 36 of those years, a Vacation Bible School teacher for more than 10 years, and the church's Tone Chime Choir director for 24 years. *Id.* She has also served as the church's trustee and financial secretary, and has assisted with church fundraising efforts on behalf of those less fortunate in the community. *Id.*

As a Christian and member of the LCMS, Judge Neely believes the teachings of the Bible and the doctrines of her denomination. Neely Aff. ¶ 22. She also seeks to conform her conduct in all areas of her life to those teachings and doctrines. *Id.* One of the core tenets of her faith is that God instituted marriage as a sacred union that joins together one man and one woman. *See id.* at 23; Rose Aff. ¶ 4; Lutheran Church, Missouri Synod, *News and Information—Upholding Marriage: God's Plan and Gift* (Connelly Aff., Ex. 11) (“As Christians, we believe and confess that God Himself instituted marriage as the life-long union of one man and one woman.”). It is thus Judge Neely's conviction that if she were to perform a wedding that does not reflect this understanding of marriage, she would be violating the tenets of her faith and disobeying God. Neely Aff. ¶ 23; *see also* Wedding Script (Neely Aff., Ex. 46). Nevertheless, if Judge Neely were to receive a request to perform a same-sex marriage (which has never happened), she would ensure that the couple received the services they requested by “very kindly giv[ing] them names and phone numbers of other magistrates who could do that wedding.” Neely Dep. at 71-72 (Ex. 10); Neely Aff. ¶ 31. This is consistent with her church's instruction to treat all people with dignity and respect as fellow bearers of the image of God. Rose Aff. ¶¶ 4-5.

Although Judge Neely's religious beliefs about marriage prevent her from presiding over some weddings, those beliefs do not affect how she decides cases. Neely Aff. ¶ 32. Given the types of cases that come before her—most of which involve traffic and parking violations, animal control, public intoxication, general nuisances, and similar matters—it is unlikely that a case would ever require Judge Neely to recognize or afford rights based on a same-sex marriage. *Id.* But if such a

case were before her, it is undisputed that she would recognize that marriage and afford the litigant all the rights that flow from it. *Id.*

Same-Sex Marriage Comes to Wyoming and Judge Neely Seeks Guidance

On October 17, 2014, a federal district court in Wyoming issued a preliminary injunction against the Wyoming law that defines marriage as the union of one man and one woman, but stayed implementation of that injunction pending appeal by the government defendants. *See Guzzo v. Mead*, 2014 WL 5317797, at 9 (D. Wyo. Oct. 17, 2014) (Connelly Aff., Ex. 12). Within the next few days, all the defendants announced that they would not appeal, which prompted the district court to give its injunction “immediate force and effect” on October 21, 2014, thereby effectively legalizing same-sex marriage in Wyoming. *See Guzzo v. Mead*, Docket No. 47, No. 2:14-cv-00200-SWS (D. Wyo. Oct. 21, 2014) (Connelly Aff., Ex. 13).

Within weeks, Judge Neely approached Judge Haws to discuss her sincerely held religious beliefs regarding marriage and to seek guidance on how to exercise her discretionary authority to solemnize marriages now that same-sex marriage had become legal in Wyoming. Neely Dep. at 76-77 (Ex. 10); Haws Dep. at 83 (Ex. 3); Neely Aff. ¶ 25. Judge Neely told Judge Haws that it was her sincerely held religious belief that marriage is the union of one man and one woman, and stated that she would not be able to solemnize same-sex marriages. Neely Dep. 77 (Ex. 10); Haws Dep. at 83-84 (Ex. 3); 1/17/15 Email from Judge Haws to Wendy Soto with Letter Attachment (Connelly Aff., Ex. 14).

Judge Haws recognized that Judge Neely was in a very difficult position. Haws Dep. at 88 (Ex. 3). Judge Haws also realized that this issue was new and that no judicial officials in Wyoming had received any guidance on how to resolve it. Haws Dep. at 85, 91-92, 97 (Ex. 3). With that in mind, Judge Haws told Judge Neely to keep a low profile and refrain from speaking publicly about the matter until they received some guidance or clarity. Haws Dep. at 85, 91-92, 97 (Ex. 3); Neely

Dep. at 97 (Ex. 10). No same-sex marriages were solemnized in Pinedale or Sublette County until December 2014. Neely Aff. ¶ 27; Cuprill Dep. at 46-49 (Connelly Aff., Ex. 15); Smith Dep. at 39-40 (Ex. 8); Wood Aff. ¶ 8.

Pinedale Roundup Reporter Ned Donovan's Inquiry

On Friday, December 5, 2014, Judge Neely was attempting to hang Christmas lights outside her home. Neely Dep. at 94-95 (Ex. 10); Neely Aff. ¶ 34. Frustrated with the project, she came inside to untangle a hopelessly intertwined strand of lights. Neely Dep. at 94-95 (Ex. 10); Neely Aff. ¶ 34. Judge Neely checked her cell phone and saw that she missed a call from an unknown number. Neely Dep. at 82-83, 94-95 (Ex. 10); Neely Aff. ¶ 34. She almost immediately returned the call, as is her habit because unknown numbers are often from people attempting to reach her about official town work. Neely Dep. at 82-83 (Ex. 10); Neely Aff. ¶ 34.

Upon dialing the unknown number, Judge Neely reached Ned Donovan. Neely Dep. at 83 (Ex. 10). She identified herself, and Mr. Donovan informed her that he was the person who had called her. *Id.* He told Judge Neely that he was a reporter for the Pinedale Roundup and asked if she was excited to be able to start performing same-sex marriages. Neely Dep. at 82-83, 87 (Ex. 10); Neely Aff. ¶ 35; Commission's Supplemental Rule 11(b) Disclosures ¶ A.2 (Connelly Aff., Ex. 16). Judge Neely, distracted at the time, struggling to remove her bulky winter clothing and holding an armload of Christmas lights, did not immediately recall Judge Haws's earlier guidance to refrain from commenting on the matter. Neely Dep. at 94-95 (Ex. 10); Neely Aff. ¶ 36. She reflexively and truthfully answered Mr. Donovan's question, telling him that her religious belief that marriage is the union of one man and one woman precludes her from officiating at same-sex weddings. Neely Dep. at 87-88 (Ex. 10); Neely Aff. ¶ 37. Mr. Donovan then proceeded to ask Judge Neely more about her personal views regarding marriage. Neely Dep. at 87 (Ex. 10); Neely Aff. ¶ 38. During the remainder of that call, Judge Neely told Mr. Donovan that other government officials in town were

willing to perform same-sex marriages, that she had never been asked to perform one, and that she had never denied anyone anything. Neely Dep. at 91-92 (Ex. 10); Neely Aff. ¶ 39.

After the conversation with Mr. Donovan, Judge Neely attempted to contact Judge Haws to tell him what transpired, but she was unable to reach him and had to leave a message on his cell phone. Neely Aff. ¶ 41; Haws Dep. at 90-91 (Ex. 3). Meanwhile, Judge Neely suspected that Mr. Donovan had called her in order to stir up trouble in town, and that he may have known her religious beliefs beforehand and was attempting to expose them. Neely Dep. at 96-98 (Ex. 10); *see also* Anderson Aff. ¶ 6. Judge Neely thus called Mr. Donovan back about twenty minutes after their first call and requested that he substitute the substance and content of her earlier comments with the following statement: "When law and religion conflict, choices have to be made. I have not yet been asked to perform a same-sex marriage." Neely Dep. at 96-98 (Ex. 10); Neely Aff. ¶ 42. Mr. Donovan told Judge Neely that he would check with other people about her request and let her know. Neely Dep. at 98 (Ex. 10).

After speaking with Judge Neely, Mr. Donovan called Pinedale Mayor Bob Jones to discuss the matter. Mayor Jones informed Mr. Donovan that Judge Neely had no authority to perform marriages in her municipal judge position. *See* 12/9/14 Sublette Examiner Article (Neely Aff., Ex. 49); 12/11/2014 Online Sublette Examiner Article (Neely Aff., Ex. 50); Jones Aff. ¶ 7. Mayor Jones further assured Mr. Donovan that he was confident that Judge Neely would be scrupulously fair to all parties who came before her as a municipal judge, and that if she thought that she could not be fair, he had no doubt that she would recuse herself. 12/11/2014 Online Sublette Examiner Article (Ex. 50); Jones Aff. ¶¶ 8-9. Mayor Jones was also quoted as telling Mr. Donovan that he "could not be more proud of [Judge] Neely," that he considered her to be a "very morally strong person," and that her religious beliefs did not "interfere with her job as municipal judge." 12/11/2014 Online Sublette Examiner Article (Ex. 50); Jones Aff. ¶¶ 5, 8. Mayor Jones's predecessor, Steve Smith,

who also appointed Judge Neely to the bench, agreed that she did not “bring her religion into the courtroom.” Smith Dep. at 54 (Ex. 8).

A few hours after the initial conversation between Mr. Donovan and Judge Neely, he called her again and attempted to ask more questions. Neely Aff. ¶ 43. Among other things, he offered not to publish a story if she would “state a willingness to perform same-sex marriages.” Commission’s Supplemental Rule 11(b) Disclosures ¶ A.2 (Ex. 16); Neely Dep. at 99 (Ex. 10). But Judge Neely would not solemnize same-sex marriages in exchange for Mr. Donovan’s promised retraction. Neely Dep. at 99 (Ex. 10). Indeed, she could not compromise her religious convictions in that way. Neely Aff. ¶ 43. She thus repeatedly declined comment. Neely Dep. at 99 (Ex. 10).

Judge Neely spoke with Judge Haws at some point before Mr. Donovan published his article, and Judge Haws told her that they would talk again once the article was published. Haws Dep. at 90-94 (Ex. 3); 1/17/15 Email from Judge Haws to Wendy Soto with Letter Attachment at 3 (Ex. 14).

Same-Sex Marriages in Pinedale and Sublette County

The demand for same-sex marriage is not high in Pinedale or Sublette County. Haws Dep. at 109 (Ex. 3). On December 5, 2014, over a month after same-sex marriage was legalized in Wyoming, Ralph “Ed” Wood, Pinedale’s Town Attorney (and also a district court commissioner and circuit court magistrate), performed Pinedale and Sublette County’s first same-sex marriage ceremony for Krystal Suzanne Mansur and Caitlin Ann Baxley. Wood Aff. ¶ 8; Cuprill Dep. at 46-50 (Ex. 15). One day later, on December 6, 2014, former Pinedale Mayor and adjunct circuit court magistrate Steve Smith performed the second same-sex marriage ceremony in Pinedale and Sublette County for Kathy Anderson and Sharon Stevens. Smith Dep. at 39-41 (Ex. 8); Cuprill Dep. at 46-50 (Ex. 15); Anderson Aff. ¶ 3; Stevens Aff. ¶ 3; Sublette Examiner Year in Review Photo (Neely Aff.,

Ex. 47). Since that time, no other same-sex marriages have been solemnized in Pinedale or Sublette County. Neely Aff. ¶ 27; Haws Dep. at 109 (Ex. 3).

Since same-sex marriage was legalized in Wyoming, “[n]o one’s been denied [the] opportunity” to get married. Haws Dep. at 109 (Ex. 3). Indeed, “[t]here are plenty of people in Sublette County who are willing to perform marriage ceremonies for same-sex couples.” Anderson Aff. ¶ 4; *see also* Wood Aff. ¶ 8 (“There is no shortage of public officials in Pinedale or Sublette County willing to officiate at same-sex wedding ceremonies.”); Artery Dep. at 37 (Connelly Aff., Ex. 19) (noting that “there are plenty of . . . officiants that are willing to officiate same-sex marriage”); Wyo. Stat. § 20-1-106(a) (Ex. 6) (listing the many individuals authorized to solemnize marriages under state law). Judge Haws, Ed Wood, and Steve Smith have all indicated that they will perform those marriages. Haws Dep. at 109 (Ex. 3); Smith Dep. at 39 (Ex. 8); Wood Aff. ¶ 8.

In addition, at least six other public officials in Pinedale and Sublette County are authorized to solemnize marriages. *See* Wyo. Stat. § 20-1-106(a) (Ex. 6); Neely Aff. ¶¶ 28-30; Current Magistrates and Contact Information List (Neely Aff., Ex. 48); Haws Dep. at 33-34 (Ex. 3). All members of the clergy (some of whom will preside over same-sex weddings) are also authorized to solemnize marriages. *See* Wyo. Stat. § 20-1-106(a) (Ex. 6); Artery Dep. at 37 (Ex. 19) (noting that “there are plenty of churches, clergy . . . willing to officiate same-sex marriage”). And Judge Haws testified that he makes special one-day magisterial appointments for citizens who want to perform a marriage for a family member or friend. Haws Dep. at 30-31 (Ex. 3). Quite literally, then, any “upstanding” citizen can become authorized to perform a wedding in Sublette County. *See id.*

Ned Donovan’s Articles

On December 9, 2014, the Sublette Examiner published Mr. Donovan’s article about Judge Neely and same-sex marriage in the print version of the paper. 12/9/14 Sublette Examiner Article (Ex. 49). Mr. Donovan quoted Judge Neely as stating that she would “not be able to do” same-sex

marriages because of her religious beliefs, that she had “not yet been asked to perform a same-sex marriage,” and that “[w]hen law and religion conflict, choices have to be made.” *Id.* The article was entitled *Pinedale Slow to Adapt to New Law*. *Id.*

Two days later, on December 11, 2014, the Sublette Examiner published in its online edition the same article it had run in its print edition, but with the new title *Pinedale judge will not marry same-sex couples*. 12/11/2014 Online Sublette Examiner Article (Ex. 50). That same day, a reporter with the Casper Star Tribune called Judge Neely and asked her to confirm the comments published in the Sublette Examiner. Neely Aff. ¶ 46. Judge Neely declined comment numerous times. *Id.* When the reporter called back later that same day, Judge Neely again declined comment. *Id.*

After reading the article, Judge Haws met with Judge Neely, and because they still had not received any guidance on how to address this issue, he told Judge Neely that he intended to seek an advisory opinion from the Wyoming Judicial Ethics Advisory Committee. Haws Dep. at 96-98 (Ex. 3); 1/17/15 Email from Judge Haws to Wendy Soto with Letter Attachment at 3 (Ex. 14). Judge Haws soon thereafter sought advice from two trusted colleagues. Haws Dep. at 97-98 (Ex. 3); 12/11/14 Email from Judge Haws to Colleagues (Connelly Aff., Ex. 17).

On December 23, 2014, Mr. Donovan published an op-ed entitled *Just Like a Journalist, a Judge Should be Impartial*. 12/23/14 Sublette Examiner Article (Neely Aff., Ex. 51). Ironically, Mr. Donovan wrote that “objectivity is crucial” for a reporter, while clearly indicating his (less than impartial) opinion that Judge Neely’s need to solemnize marriages consistent with her religious convictions “cannot be accepted.” *Id.* Similarly, on January 30, 2015, Mr. Donovan penned a commentary entitled *A valedictory dispatch from our man in Pinedale* before his departure from Wyoming. 1/30/15 Pinedale Roundup Article (Neely Aff., Ex. 55). In that piece, he reiterated his desire that Judge Neely be removed from office: “It is sad that Judge Ruth Neely is still in an office

of responsibility, almost two months after *admitting* to me that she would not officiate in same-sex marriages.” *Id.* (emphasis added).

While he was living in Pinedale, Mr. Donovan made a habit of inquiring with the Sublette County Clerk’s office regarding the status of its efforts to comply with the legalization of same-sex marriage. Haws Dep. at 118-119 (Ex. 3). Even since his departure, Mr. Donovan has communicated with a number of people in Pinedale—including Steve Smith and Stephen Crane, the current editor of the Sublette Examiner and Pinedale Roundup—to check on the status of the case against Judge Neely. *See* Smith Depo. at 14-17 (Ex. 8); Crane Aff. ¶¶ 2-3. Mr. Donovan has also attempted to aid the Commission’s efforts to remove Judge Neely by providing the Commission with a copy of the notes that he allegedly took during his discussions with Judge Neely and Mayor Jones in December 2014. *See* Neely Dep. at 91 (Ex. 10). Mr. Donovan is thus keenly interested in bringing about Judge Neely’s removal from the bench. In fact, after urging Mr. Crane to continue to publish stories about the case against Judge Neely, Mr. Donovan stated to him, referring to Judge Neely, that he wanted “to see her sacked.” Crane Aff. ¶ 4.

The Genesis of the Commission’s “Own Motion” Proceedings in this Matter

Shortly after Mr. Donovan’s article was published, longtime Pinedale resident Ana Cuprill read it. Cuprill Dep. at 64-66 (Ex. 15). Ms. Cuprill is the wife of Steve Smith, *see* Cuprill Dep. at 19 (Ex. 15), and also the Chair of the Wyoming Democratic Party, *see* Cuprill Dep. at 30 (Ex. 15), which supports legalizing same-sex marriage as part of its official platform, *see* Wyoming Democratic Party Platform (Connelly Aff., Ex. 18). Not long after reading the article, Ms. Cuprill traveled to Cheyenne to attend a Christmas party at the house of Wendy Soto, the Executive Director of the Commission. Cuprill Dep. at 69-72 (Ex. 15); Soto Dep. at 77-78 (Ex. 7); Artery Dep. at 57-58 (Ex. 19). The invitation to Ms. Soto’s Christmas party, which was advertised as a Democratic Party event, was forwarded to Ms. Cuprill on one of her social media accounts. Cuprill

Dep. at 70 (Ex. 15). Ms. Cuprill felt it necessary to attend as part of her duties as Chair of the Party. *Id.* at 72-74. Ms. Cuprill's friend Jeran Artery arranged for her to stay the night at Ms. Soto's house. *Id.* at 71-72.

Mr. Artery also attended the party at Ms. Soto's house. Artery Dep. at 56-57 (Ex. 19). He is the President of Wyoming Equality, *see id.* at 18-22, an organization that provides "an Advocacy System for people impacted by . . . sexual orientation issues" in Wyoming, *see* Wyoming Equality Mission Statement (Connelly Aff., Ex. 20). In particular, the group spent many years advocating for the legalization of same-sex marriage in Wyoming. Artery Dep. at 20-28, 46-47 (Ex. 19); 4/8/14 WyoFile Article (Connelly Aff., Ex. 21). Most notably, Wyoming Equality served as a plaintiff in a state-court lawsuit captioned *Courage v. Wyoming* that sought to overturn the state's law defining marriage as the union of one man and one woman. Artery Dep. at 20-28 (Ex. 19).

Ms. Soto served on the Board (as Secretary) of Wyoming Equality from March 2011 to approximately October 2013. Soto Dep. at 31 (Ex. 7). She did so at the behest of Mr. Artery, who considers Ms. Soto his best friend and considers her dedicated to LGBT advocacy. Artery Dep. at 54-55 (Ex. 19). Ms. Soto's official role with Wyoming Equality overlapped with her tenure at the Commission, which began in June 2012. Soto Dep. at 31-33 (Ex. 7). She stepped down from her position with Wyoming Equality because she was concerned that her involvement in the *Courage v. Wyoming* case might conflict with her Commission duties. *Id.* at 32. But prior to resigning her position with Wyoming Equality, she attended litigation strategy meetings for the *Courage* case. *Id.* at 32-33. Even after her resignation, while serving as the Executive Director of the Commission, Ms. Soto publicly supported Wyoming Equality's efforts in the *Courage* case by attending a rally and displaying a pro-same-sex-marriage sign on the steps of the state capitol. Artery Dep. at 31-33 (Ex. 19); Nickerson, *supra*, at 1 (Ex. 21).

While at Ms. Soto's Christmas party, Ms. Cuprill and Mr. Artery discussed Ned Donovan's article and Judge Neely. Cuprill Dep. at 75-76, 79 (Ex. 15). Mr. Artery suggested that Ms. Cuprill discuss the matter with Ms. Soto. See Commission's Supplemental Rule 11(b) Disclosures ¶ A.1. (Ex. 16). While Mr. Artery and Ms. Cuprill were in the kitchen talking about the matter, Ms. Soto overheard them. Cuprill Dep. at 75-78 (Ex. 15). Soon thereafter, Ms. Soto asked Ms. Cuprill, "Do you know what I do for a living?" *Id.* at 76. She then informed Ms. Cuprill that she was the Executive Director of the Commission and handed her an official business card. *Id.* at 76-77. Ms. Soto wanted to see the article, and Ms. Cuprill agreed to send it to her. Soto Dep. at 84-85 (Ex. 7).

The Commission Investigation Commences

On December 22, 2014, at 12:21 p.m., Ms. Cuprill emailed Ms. Soto a copy of the online version of the Sublette Examiner article just as Ms. Soto had requested. Commission's Answer to Interrogatories No. 14 (Connelly Aff., Ex. 22); Soto Dep. at 83-86 (Ex. 7); 12/22/14 Email from Ana Cuprill to Wendy Soto attaching Sublette Examiner Article (Connelly Aff., Ex. 23). In her email, Ms. Cuprill stated that the article concerned "Pinedale's municipal judge who *admits* she will not be performing same-sex marriages based on her religious views." *Id.* (emphasis added). Ms. Cuprill also gave Ms. Soto the contact information for Mr. Donovan. *Id.*

At 1:59 p.m. that same day, Ms. Soto forwarded the email to then-Commission Chair Julie Tiedeken, requesting that Ms. Tiedeken review it and call Ms. Soto to discuss. 12/22/14 Email from Wendy Soto to Julie Tiedeken (Connelly Aff., Ex. 24). After that discussion, Ms. Soto selected the members of an Investigatory Panel to review the article about Judge Neely. Soto Dep. at 110, 115 (Ex. 7); Tiedeken Dep. at 46 (Connelly Aff., Ex. 25). At 5:40 p.m., Ms. Soto emailed a copy of the article along with disposition forms to the Investigatory Panel members. Soto Dep. at 110-112 (Ex. 7); 12/22/14 Email from Wendy Soto to Investigatory Panel Members (Connelly Aff., Ex. 26). The email was entitled "2014-27 Own Motion," indicating that the matter had already received a case

number and that Ms. Soto deemed this a potential matter for the Commission to consider on its own motion. Soto Dep. at 110 (Ex. 7); Tiedeken Dep. at 43-45 (Ex. 25). This was the first time that Ms. Soto ever forwarded information regarding a potential own-motion matter to an Investigatory Panel. Soto Dep. at 55-56; 113 (Ex. 7).

The Investigatory Panel, composed of Judge Wade Waldrip, Julie Tiedeken (later replaced by Jay Gilbertz), Leslie Petersen, Karen Hayes, and Kerstin Connolly, first discussed the matter on a conference call on January 6, 2015. *See* 12/22/14 Email from Wendy Soto to Investigatory Panel Members (Ex. 26); Transcript of the Investigatory Panel's 1/6/15 Teleconference at 1-3 (Connelly Aff., Ex. 27) (hereinafter "1/6/15 Transcript"). The Panel concluded that Judge Neely's statement of her religious beliefs about marriage might violate Rule 2.3 of the Wyoming Code of Judicial Conduct (the "Code"), that the Commission would commence an own-motion investigation, and that the Commission would request information from both Judge Neely and Judge Haws. Tiedeken Dep. at 49-51, 99-100 (Ex. 25); 1/6/15 Transcript at 5-11 (Ex. 27); Soto Dep. at 121 (Ex. 7). On January 12, 2015, the Commission sent its inquiry letters to Judge Neely and Judge Haws. 1/12/15 Letter from the Commission to Judge Haws and Judge Neely (Connelly Aff., Ex. 28). Judge Neely did not receive her letter until January 15, 2015. Neely Aff. ¶ 49.

Judge Neely Seeks Official Guidance

On January 6, 2015, the same day that the Commission voted to initiate its own-motion investigation, Judge Neely requested an advisory opinion from the Wyoming Judicial Ethics Advisory Committee on how to exercise her discretionary authority to perform marriages given her sincerely held religious beliefs. Neely Aff. ¶ 48; Neely Dep. at 57-58 (Ex. 10); 1/5/15 Email from Judge Neely to Ronda Munger (Neely Aff., Ex. 52); 1/6/15 Letter from Judge Neely to Judicial Ethics Advisory Committee (Neely Aff., Ex. 53). On January 29, 2015, Professor John Burman, Chair of the Judicial Ethics Advisory Committee, responded to Judge Neely's letter. 1/29/15 Letter

from John Burman to Judge Neely (Neely Aff., Ex. 54). He thanked Judge Neely for requesting an opinion on what he identified as a “complex ethical issue,” but he concluded that the Advisory Committee was “prohibited from issuing an opinion” because by that time the Commission had already brought proceedings against Judge Neely. *Id.*

Judge Haws and Judge Neely Respond to the Commission’s Inquiry Letter

Upon receiving the Commission’s inquiry letter, Judge Haws met with Judge Neely on or about January 15, 2015. Neely Aff. ¶ 49. Judge Neely informed Judge Haws that she had requested an opinion from the Judicial Ethics Advisory Committee, and she provided Judge Haws with a copy of her letter. *Id.* Because of the pendency of the Commission’s investigation, Judge Haws suspended Judge Neely as a circuit court magistrate at that meeting. Haws Dep. at 103-107 (Ex. 3).

Judge Haws sent a letter responding to the Commission’s inquiry on January 17, 2015. 1/17/15 Email from Judge Haws to Wendy Soto with Letter Attachment (Ex. 14). Judge Neely responded on February 7, 2015. In her letter, she informed the Commission that she had never been asked to perform a same-sex marriage and thus had never refused to perform one. 2/7/15 Letter from Judge Neely to the Commission (Neely Aff., Ex. 56). She also informed the Commission that she had sought an advisory opinion from the Judicial Ethics Advisory Committee. *Id.* Judge Neely further stated that there had never been a complaint of any kind filed against her in any of her judicial capacities, and that she had never been accused of being biased or prejudiced. *Id.* Finally, as requested by the Commission, Judge Neely specifically addressed Rule 2.3, stating that “nothing she [had] done indicates bias or prejudice,” and that her “inability to solemnize same-sex unions does not arise from any prejudice or bias against people, but rather from [her] sincerely held religious beliefs about marriage.” *Id.*

The Investigatory Panel Decides to Bring Formal Proceedings Against Judge Neely

On February 18, 2015, after receiving Judge Haws's and Judge Neely's response letters, the Investigatory Panel again met by teleconference to discuss the matter. Transcript of the Investigatory Panel's 2/18/15 Teleconference (Connelly Aff., Ex. 29) (hereinafter "2/18/15 Transcript"). During that call, Investigatory Panel member Judge Waldrip inexplicably said that Judge Neely had failed to "respond[] to Rule 2.3." *Id.* at 4; *see also* Tiedeken Dep. at 110 (Ex. 25) (noting that Judge Neely "was silent with regard to . . . bias or prejudice"). He then stated his belief that Judge Neely's statement of her "obviously sincere religious beliefs" constituted bias in "violation of a clear rule of judicial conduct," and that Judge Neely could not "continue in the role of a magistrate" and perhaps not "in any role in the judiciary." 2/18/15 Transcript at 4 (Ex. 29). Although Judge Waldrip broached the possibility that Judge Neely be given the choice to retire or opt for an Adjudicatory Panel, Investigatory Panel member Ms. Tiedeken said that resignation was not appropriate because Judge Neely "went public" about her beliefs when she responded to Mr. Donovan's questioning. *Id.* at 6-7. The Investigatory Panel then decided to appoint an Adjudicatory Panel and hire Disciplinary Counsel to institute formal proceedings against Judge Neely. *Id.* at 7-9.

Soon thereafter, Ms. Soto appointed the three members of the Adjudicatory Panel. Soto Dep. at 132-33, 136, 138-39 (Ex. 7). She selected (1) attorney Mel Orchard, (2) Circuit Court Judge Wendy Bartlett, and (3) citizen-member Barbara Dilts. *See* Soto Dep. at 132-33, 138-39 (Ex. 7); 3/2/15 Letter from Investigatory Panel Acting Presiding Officer Karen Hayes to Commission Chair Kerstin Connolly (Connelly Aff., Ex. 31); 2/8/15 Transcript at 7-8 (Ex. 29).

In late February or early March 2015, Ms. Soto began researching the judicial-ethics issues implicated by this case. Soto Dep. at 141-45 (Ex. 7). Ms. Soto contacted the Center for Judicial Ethics to see whether judicial commissions in other states had addressed similar issues. *Id.* at 141. The only information that Ms. Soto received was about a case out of Washington involving a judge

named Gary Tabor. *Id.* Ms. Soto then contacted Kurt Twitty, an investigator with the Washington State Commission on Judicial Conduct. *Id.* at 141-42. Ms. Soto spoke with him on the phone and requested that he provide any legal research he had collected. *Id.* at 141-44. On March 3, 2015, Mr. Twitty emailed Ms. Soto his research. *Id.* at 145-49; Notes of Wendy Soto (Connelly Aff., Ex. 32); 3/3/15 Email from Kurt Twitty to Wendy Soto (Connelly Aff., Ex. 33). Ms. Soto then forwarded that information to Mr. Dixon. Soto Dep. at 148 (Ex. 7).

The Commission Files its Formal Notice

On March 4, 2015 the Commission filed its Notice of Commencement of Formal Proceedings against Judge Neely. *See* Notice of Commencement of Formal Proceedings (Connelly Aff., Ex. 34) (hereinafter “Notice”). In its Notice, the Commission alleged that Judge Neely had violated four provisions of the Code—namely, Rule 1.1 (Compliance with the Law), Rule 1.2 (Promoting Confidence in the Judiciary), Rule 2.2 (Impartiality and Fairness), and Rule 2.3 (Bias, Prejudice and Harassment). *Id.* The Commission concluded that “Judge Neely’s stated position with respect to same sex marriage precludes her from discharging the obligations of [the Code] . . . not just with respect to the performance of marriage ceremonies, but with respect to her general duties as Municipal Court Judge.” *Id.* In other words, the Commission asserts that Judge Neely can no longer be a judge now that she has stated her religious beliefs about marriage.

The Commission seeks removal—the most drastic sanction available—even though it has very rarely sought removal as a remedy. *See* Commission’s Answer to Interrogatories No. 8 (Ex. 22); Tiedeken Dep. at 103-04 (Ex. 25). And the Commission considers removal all the more appropriate because Judge Neely has chosen to defend herself in this matter. *See* Commission’s Response to Judge Neely’s Requests for Admission No. 1 (Ex. 9) (noting that Judge Neely’s “unwillingness to acknowledge that her words and conduct violate the Code of Judicial Conduct” is

a factor supporting the Commission's charge of judicial misconduct against Judge Neely); Tiedeken Dep. at 109-11 (Ex. 25).

On April 27, 2015, Judge Neely filed a Verified Answer to the Commission's Notice, denying the Commission's allegations and raising a host of constitutional defenses. Verified Answer (Connelly Aff., Ex. 35).

The Commission Files An Amended Formal Notice


On August 28, 2015, the Commission filed an Amended Notice of Commencement of Formal Proceedings. Amended Notice of Commencement of Formal Proceedings (Connelly Aff., Ex. 36) (hereinafter "Amended Notice"). In that Amended Notice, the Commission alleged that Judge Neely, by hiring counsel from Alliance Defending Freedom, a pro-bono public-interest legal organization, violated Rule 2.4 (External Influences on Judicial Conduct) and Rule 3.6 (Affiliation with Discriminatory Organizations). *Id.* at 5-6. The Commission stated that "Alliance Defending Freedom . . . is an organization that discriminates and advocates for discrimination" because it promotes the idea that marriage is the unique union of one man and one woman. *Id.* at 4. The Commission also claimed that Judge Neely's "engagement of" Alliance Defending Freedom attorneys and "her affiliation with [that group] . . . precludes her from discharging the obligations of [the Code,] not just with respect to the performance of marriage ceremonies, but with respect to her general duties as Municipal Court Judge." *Id.* at 6.

On September 16, 2015, Judge Neely filed a Motion to Dismiss the New Claims in the Amended Notice of Commencement of Formal Proceedings. Motion to Dismiss (Connelly Aff., Ex. 37). Judge Neely argued that the Commission's Amended Notice threatened fundamental constitutional rights, including the right to hire the counsel of one's choice, the right to free association, and the right to free exercise of religion. *Id.* Judge Neely also established that an individual or group does not engage in "invidious discrimination" by believing, or supporting the

* belief, that “marriage is the unique, presumptively procreative relationship that unites one man and one woman for life.” *Id.* at 13. This is especially true in light of the United States Supreme Court’s recent acknowledgment in *Obergefell v. Hodges* that such a belief about marriage “long has been held—and continues to be held—in good faith by reasonable and sincere people [in the United States] and throughout the world.” 135 S. Ct. 2584, 2594 (2015) (emphasis added).

On September 28, 2015, the Commission filed a Notice of Confession of Motion to Dismiss, stating that the Commission “concedes” Judge Neely’s motion. Notice of Confession (Connelly Aff., Ex. 38). Having been “advised that the parties are in substantial agreement with regard to the motion,” Presiding Officer Mel Orchard then signed an Order Dismissing Amended Claims on October 5, 2015. Order Dismissing Amended Claims (Connelly Aff., Ex. 39). Soon thereafter, Judge Neely filed her Verified Amended Answer to the Commission’s Notice. Verified Amended Answer (Connelly Aff., Ex. 40). This Motion for Summary Judgment then followed, informing the Adjudicatory Panel that there are no disputed issues of material fact and asking the Panel to dismiss the Commission’s remaining claims against Judge Neely.

Dated: October 30, 2015



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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
No. 2014-27 AND ETHICS
Official Record
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Wendy J. Soto

MEMORANDUM OF LAW IN SUPPORT OF THE HONORABLE RUTH NEELY'S
MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

The Commission on Judicial Conduct and Ethics (the “Commission”) seeks to remove Judge Neely from her judicial positions as Pinedale Municipal Judge and a circuit court magistrate. The Commission pursues this most drastic of sanctions because Judge Neely told a reporter, in response to his question, that she believes marriage is the union of one man and one woman, and that her religious beliefs preclude her from performing any other marriages.

The Commission’s initial justification for this proceeding appeared to rest on the misconception that Judge Neely is *required* to perform marriages. But it has been clear all along that Judge Neely, in her capacity as Pinedale Municipal Judge, *does not even have legal authority to perform marriages*. Jones Aff. ¶ 7. In light of this, the Commission’s attempt to strip Judge Neely of her position as Pinedale Municipal Judge—a position that has nothing to do with performing marriages—shows just how farfetched this prosecution is.

And the Commission’s quest to take Judge Neely’s circuit court magistrate position fares no better. While it is true that magistrates have legal authority to perform weddings, they have *no duty to solemnize all or even any marriages*. See Wyo. Stat. § 20-1-106(a) (providing that magistrates “*may perform the ceremony of marriage*”) (emphasis added) (Connelly Aff., Ex. 6). Rather, their authority to perform marriages is *discretionary*, and the Commission admits this. See Soto Dep. at 153 (Connelly Aff., Ex. 7) (acknowledging that judges are not “required to perform marriages”).

True enough, the Commission might respond, but once a circuit court magistrate decides to officiate at marriages, she must do them all. Yet the undisputed facts show that magistrates and other judges who perform some marriages may decline to solemnize others for a host of reasons—they may refuse, for example, to perform weddings for strangers (i.e., people who are not personal friends), weddings on the weekends, or weddings in certain locations. See Soto Dep. at 151-54 (Ex.

7);¹ Haws Dep. at 62-63 (Connelly Aff., Ex. 3); Smith Dep. at 41-44 (Connelly Aff., Ex. 8). So the notion that a circuit court magistrate who presides over some weddings must perform all weddings is refuted by the evidence in the record, including the testimony of the Commission's Executive Director. *See* Soto Dep. at 151-54 (Ex. 7).

These facts put the Commission in a quandary, raising the simple question: Why is Judge Neely treated differently? Yet the responses that the Commission has mustered are baseless and serve only to establish the unconstitutionality of punishing Judge Neely under these circumstances.

The Commission suggests in places that Judge Neely's "actions" concerning marriage are unacceptable. *See* Commission's Answer to Interrogatories No. 2 (Connelly Aff., Ex. 22). But that argument must fail because the Commission has not pointed to any impermissible *conduct* on the part of Judge Neely. Instead, the Commission admittedly targets Judge Neely for her "stated position with respect to same sex marriage"—that is, *for expressing her religious beliefs about marriage*. Notice of Commencement of Formal Proceedings ¶ B.2 (Connelly Aff., Ex. 34) (hereinafter "Notice"). Yet constitutional safeguards for free speech and the free exercise of religion forbid the Commission from punishing Judge Neely for her protected religious expression.

Nor can the Commission justify its differential treatment of Judge Neely with its claim that she expressed "bias or prejudice." Commission's Answer to Interrogatories Nos. 3, 7 (Ex. 22). The U.S. Supreme Court recently foreclosed such an argument when it observed that views about marriage like those that Judge Neely expressed are "based on *decent and honorable religious or philosophical premises*" and are "held[] *in good faith by reasonable and sincere people.*" *Obergefell v. Hodges*, 135 S. Ct. 2584, 2594, 2602 (2015) (emphasis added). In other words, Judge

¹ All citations to "Ex." refer to the exhibits attached to the Affidavits of Kenneth J. Connelly or Judge Neely, both of which have been filed in support of Judge Neely's Motion for Summary Judgment.

Neely's religious expression about marriage is a decent and reasonable view that does not reflect rank bias or prejudice. This presents an insurmountable roadblock for the Commission's claims.

In fact, a close examination of the Commission's arguments demonstrates the true reason why it treats Judge Neely differently from other judges—because the Commission's representatives do not agree with, nor do they like, her religious views on marriage. After all, nearly all magistrates who decline to solemnize some weddings manifest a kind of partiality. For instance, magistrates who perform weddings only for personal friends manifest bias against strangers. And magistrates who set a high fee for the weddings they perform, *see* Haws Dep. at 68-69 (Ex. 3), manifest bias against the socioeconomically disadvantaged. But neither the judge who confines weddings to personal friends nor the judge who sets a high fee is punished. Judge Neely, on the other hand, is singled out because of the nature of her religious beliefs.

Rule 2.11 of the Wyoming Code of Judicial Conduct (the "Code") further demonstrates that the Commission is unconstitutionally targeting Judge Neely. That Rule permits judges who have a "bias or prejudice" related to a specific proceeding to recuse themselves. *See* Wyoming Code of Judicial Conduct, Rule 2.11(A)(1) (hereinafter "W.C.J.C., R."). By allowing judges with biases that affect their *mandatory* adjudicative duties to recuse and remain judges, while removing Judge Neely because her religious convictions affect her *discretionary* authority to perform marriages, the Commission is arbitrarily disfavoring Judge Neely in violation of the federal and state constitutions.

Perhaps most troubling of all, allowing the Commission's claims to proceed would produce needless harm and contravene basic notions of justice. Of particular note, the people of Pinedale would be injured because they would lose the caring, fair, and undeniably impartial judge who has sat on the local bench for over two decades. Whether tailoring a sentence to encourage an illiterate young man to learn how to read, *see* Neely Aff. ¶ 20, or "instill[ing] a sense of responsibility in the young people who appear before her," Jones Aff. ¶ 10, she has positively impacted the lives of

many who have come through her courtroom, *see* Wood Aff. ¶ 6; Jones Aff. ¶ 10. Indeed, even members of the local LGBT community, who recognize that Judge Neely “treat[s] all individuals respectfully and fairly inside and outside her courtroom,” believe that “it would be obscene and offensive to discipline” her in this case. Anderson Aff. ¶ 5.

Siding with the Commission would also jeopardize other Wyoming judges, regardless of their beliefs or expression, whether religious or nonreligious. For if the Commission may punish Judge Neely because she expressed her beliefs, it could also apply the vague Code provisions that prohibit judges from “manifest[ing] bias,” W.C.J.C., R. 2.3(B), or “the appearance of impropriety,” W.C.J.C., R. 1.2, to discipline other judges whose views or speech the Commission’s representatives deem unacceptable. Simply put, no judge in Wyoming who speaks in public or private her religious or nonreligious views on any issue is safe if the Commission has the power it asserts here.

Finally, a ruling for the Commission would negatively affect people of faith. It would create an unlawful religious test for public office in violation of the U.S. and Wyoming Constitutions, and communicate to the public that some professions are off limits for people who hold certain religious beliefs—a profoundly demeaning message to citizens who share those deeply held convictions.

The Adjudicatory Panel, however, is required by both the state and federal constitutions to avoid all these harms, grant Judge Neely’s Motion for Summary Judgment, and dismiss the Commission’s claims against her. Judge Neely respectfully asks the Panel to do this and provides this Memorandum of Law in support of her motion.

BRIEF SUMMARY OF RELEVANT FACTS

A full recitation of the facts and procedural history of this case are found in the accompanying Statement of Undisputed Materials Facts. But a brief summary is provided here.

The efforts to remove Judge Neely from her judicial positions began when Ned Donovan, a British expatriate journalist who had taken up temporary residence in Pinedale, telephoned Judge Neely out of the blue. Neely Dep. at 82-83 (Connelly Aff., Ex. 10). He asked whether she was excited to be able to start performing same-sex marriages. *Id.* at 82-83, 87 (Ex. 10); Commission’s Supplemental Rule 11(b) Disclosures ¶ A.2 (Connelly Aff., Ex. 16). Judge Neely answered the question reflexively and truthfully, stating that her religious belief that marriage is the union of one man and one woman precludes her from officiating at same-sex weddings. Neely Dep. at 87-88, 94-95 (Ex. 10); Neely Aff. ¶ 37. Mr. Donovan later published Judge Neely’s response in the local newspapers and called specific attention to “her religious beliefs.” 12/9/15 Sublette Examiner Article (Neely Aff., Ex. 49). Mr. Donovan, who has since returned to his native England, has made clear his intentions concerning Judge Neely, candidly stating that he would like nothing more than to “see her sacked.” Crane Aff. ¶ 4.

After Mr. Donovan published his articles, others who disagree with Judge Neely’s religious views took Mr. Donovan’s lead and set out to penalize her for her beliefs and expression. One such person is Jeran Artery, head of the LGBT advocacy organization Wyoming Equality, and a man who has openly stated his belief that some people “should be fired, forced to step down[,] for believing that marriage is the union of one man and one woman.” Artery Dep. at 36-37 (Connelly Aff., Ex. 19). So after learning about Judge Neely’s beliefs regarding marriage, he ensured that her comments were brought to the attention of Wendy Soto—his best friend, a former Wyoming Equality Board member, and the current Executive Director of this very Commission. Commission’s Supplemental Rule 11(b) Disclosures ¶ A.1 (Ex. 16); Soto Dep. at 30-32, 53-54 (Ex. 7).

Armed with Mr. Donovan’s article, Ms. Soto for the first time in her tenure as Executive Director brought information about a judge to the attention of the Commission and selected an

Investigatory Panel to initiate an investigation on the Commission's own motion (that is, without receiving a formal complaint). Soto Dep. at 55-59, 107-117 (Ex. 7). The Commission then asked Judge Neely to confirm what had been reported about her religious beliefs. 1/12/15 Letter from the Commission to Judge Haws and Judge Neely (Connelly Aff., Ex. 28); Soto Dep. at 125-126 (Ex. 7). Ever since receiving Judge Neely's response to this inquiry, the Commission has steadfastly maintained that her truthful statement of her religious views about marriage renders her unfit to be a judge. Notice ¶¶ A.4, A.8, B.2 (Ex. 34).

Even during this proceeding, the Commission has shown hostility toward Judge Neely's religious beliefs about marriage. Indeed, midway during the discovery process, the Commission claimed that Judge Neely violated additional Code provisions by associating with attorneys who share her beliefs. *See* Amended Notice of Commencement of Formal Proceedings ¶¶ A.9, A.10, B.2 (Connelly Aff., Ex. 36) (hereinafter "Amended Notice"). After Judge Neely moved to dismiss the new claims because they infringed her constitutional rights of free association, choice of counsel, and free exercise of religion, *see* Motion to Dismiss (Connelly Aff., Ex. 37), the Commission "conceded" Judge Neely's motion, and the Presiding Officer dismissed those claims, *see* Notice of Confession (Connelly Aff., Ex. 38); Order Dismissing Amended Claims (Connelly Aff., Ex. 39). But even though those claims have been dismissed, the episode remains an admitted attempt by the Commission to deprive Judge Neely of important constitutional rights because of her and her counsel's religious beliefs and expression concerning marriage.

Notwithstanding this significant overreach, the Commission remains committed to removing a dedicated public servant with a sterling record, free from any complaints of misconduct of any sort. *See* Commission's Response to Judge Neely's Requests for Admission Nos. 5, 6, 9 (Connelly Aff., Ex. 9); Jones Aff. ¶¶ 5, 11. She is well respected by the citizens of Pinedale—including LGBT individuals in that community—as an excellent judge who does not display even a hint of bias, and

has always impartially and fairly assessed the facts and applied the law in the cases before her. *See* Wood Aff. ¶ 5 (testimony of Pinedale’s Town Attorney who regularly appears before Judge Neely affirming that “she has never exhibited even the slightest hint of bias, prejudice, or partiality toward anyone”); Stevens Aff. ¶ 5 (testimony of a member of the LGBT community who married her same-sex spouse in Pinedale affirming that Judge Neely “has always treated all individuals respectfully and fairly inside and outside her courtroom, regardless of their sexual orientation”). She is also widely regarded as a judge who positively impacts the lives of many individuals who appear before her in court. *See* Wood Aff. ¶ 6; Jones Aff. ¶ 10; Neely Aff. ¶ 20; Trent Kynaston, *A Bad Situation Turned Good* (Neely Aff., Ex. 45). In short, as Pinedale’s Mayor attests, Judge Neely “is a tremendous asset to the community.” Jones Aff. ¶ 12.

ARGUMENT

I. Legal Standard for Summary Judgment

“The essential purpose of the summary judgment procedure is to eliminate the expense and burden of a formal trial when only questions of law are involved.” *Loredo v. Solvay Am., Inc.*, 212 P.3d 614, 620 (Wyo. 2009). Accordingly, summary judgment is appropriate when “the pleadings, depositions, and affidavits on file ‘show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’” *Id.* at 622 (quoting Wyo. R. Civ. P. 56(c)). Put differently, “summary judgment is appropriate when the only issue is the resolution of a question of law based upon a settled set of facts.” *Iberlin v. TCI Cablevision of Wyoming, Inc.*, 855 P.2d 716, 719 (Wyo. 1993). Even if a fact is subject to a genuine dispute based on actual evidence, that dispute “cannot prevent the entry of a summary judgment” if it “does not relate to a material fact,” which is a fact that can change the outcome of the proceeding. *Loredo*, 212 P.3d at 620.

In this proceeding, neither Judge Neely nor the Commission has ever suggested that any of the material facts are disputed. It is thus agreed that this case presents pure questions of law. Hence, there is no need for an evidentiary hearing, and this case should be resolved on summary judgment.

II. Judge Neely Did Not Violate the Wyoming Code of Judicial Conduct.

The Commission alleges that “Judge Neely’s stated position with respect to same sex marriage” constitutes a violation of the Code and mandates her removal from the bench. Notice ¶ B.2 (Ex. 34). In other words, the Commission argues that Judge Neely contravened the Code by respectfully stating, in response to a question, that her religious belief that marriage is the union of one man and one woman precludes her from solemnizing any other union as a marriage. *See id.* at ¶¶ A.4, A.8, B.2. The Commission variously characterizes this speech as indicative of impermissible bias, partiality, impropriety, appearance of impropriety, and failure to follow the law. *See* Commission’s Answer to Interrogatories Nos. 2-7, 11 (Ex. 22). Yet the Commission is mistaken—Judge Neely’s religious expression does not violate the Code.

A. Judge Neely Did Not Violate Rule 2.3.

Rule 2.3 provides that a “judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice,” and that a “judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice . . . including but not limited to bias [or] prejudice . . . based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.” W.C.J.C., R. 2.3(A) & (B).

Judge Neely did not violate this Rule because her comments about marriage were made outside the context of performing “judicial duties” and did not refer to the performance of “judicial duties.” Indeed, in her role as a municipal judge, Judge Neely does not have any authority to officiate at a wedding. *Jones Aff.* ¶ 7. And even when acting as a circuit court magistrate, she does

not have a “duty” to perform marriages. Wyoming law provide that circuit court magistrates “*may* perform the ceremony of marriage,” Wyo. Stat. § 20-1-106(a) (Ex. 6); but it does not impose upon Judge Neely or any other circuit court magistrate a duty or obligation to do so. *See* Black’s Law Dictionary (10th ed. 2014) (defining “duty” to mean “[a] legal obligation that is . . . due to another” or something that a person “is bound to do”). Instead, the law treats the solemnization of marriages as a discretionary authority available to circuit court magistrates should they choose to exercise it. The Commission conceded this point when its Executive Director testified that a judge or circuit court magistrate is not required to preside over weddings and that they may decline to perform a particular marriage simply because they do not want to do it. Soto Dep. at 151-153 (Ex. 7). Because the topic of Judge Neely’s response to Mr. Donovan—her religious beliefs about marriage and how they affect her ability to officiate at weddings—did not pertain to her “judicial duties,” she did not violate Rule 2.3.

Additionally, Judge Neely did not contravene that Rule because her expression about marriage occurred outside of, and did not relate to, an adjudicative proceeding. The Rule’s commentary demonstrates that its focus is on bias or prejudice expressed during adjudicative proceedings rather than on comments or conduct outside that context. *See* W.C.J.C., R. 2.3 cmt. 1 (“A judge who manifests bias or prejudice *in a proceeding* impairs the fairness of the proceeding . . .”) (emphasis added); Arthur Garwin et al., *Annotated Model Code of Judicial Conduct* 113 (2d ed. 2011) (“Former Canons 3B(5) and 3B(6), upon which Rule 2.3 is based, were added . . . to emphasize the requirements of impartial decision making and the appearance of fairness *in the courtroom.*”) (emphasis added). Case law confirms this. *See Miss. Comm’n on Judicial Performance v. Boland*, 975 So. 2d 882, 895 (Miss. 2008) (holding that the commission erred by finding that a judge violated the rule requiring judges to perform judicial duties without bias or prejudice because the judge’s allegedly biased comments did not occur in an adjudicative

proceeding but in her capacity as a judge speaking at a conference). Because Judge Neely's response to Mr. Donovan did not occur during or relate to an adjudicative proceeding, she did not violate Rule 2.3.

Moreover, Judge Neely's honest and respectful response to Mr. Donovan's question about marriage is not the type of malicious or inflammatory speech that Rule 2.3 seeks to prohibit. Comment 2 to that Rule indicates that its purpose is to forbid judges from manifesting "epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics." W.C.J.C., R. 2.3 cmt. 2. Judge Neely, however, communicated beliefs about marriage that, as the U.S. Supreme Court recently acknowledged, are "based on *decent and honorable religious or philosophical premises*" and are "held[] *in good faith by reasonable and sincere people.*" *Obergefell*, 135 S. Ct. at 2594, 2602 (emphasis added). Thus, Rule 2.3's examples of forbidden prejudice, none of which resembles Judge Neely's comments, confirm that Judge Neely did not violate the Rule.

Furthermore, Judge Neely's response to Mr. Donovan comports with Rule 2.3 because she did not manifest "bias or prejudice" based upon "sexual orientation." Black's Law Dictionary defines "bias" as "prejudice" or a "mental inclination or tendency," and it defines "prejudice" as "a strong and *unreasonable dislike*" or "[a] preconceived judgment or opinion formed with *little or no factual basis.*" Black's Law Dictionary (10th ed. 2014) (emphasis added). Here, however, Judge Neely's response to Mr. Donovan did not reflect any dislike of LGBT *individuals*; rather, it showed her sincerely held religious beliefs about *marriage*. Those beliefs about marriage do not constitute prejudice because they are not unreasonable "opinion[s] formed with little or no factual basis." On the contrary, as stated above, the U.S. Supreme Court recently recognized that those beliefs are "based on decent and honorable religious or philosophical premises" and are "held[] in good faith

by reasonable and sincere people.” *Obergefell*, 135 S. Ct. at 2594, 2602. The Commission has thus failed to show that Judge Neely manifested impermissible prejudice.

Nor has the Commission offered any other evidence to support its baseless and offensive insinuation that Judge Neely dislikes or is otherwise prejudiced against LGBT individuals. In fact, the undisputed evidence, including evidence from LGBT individuals, belies that spurious charge:

- Sharon Stevens, who entered into a same-sex marriage with Kathy Anderson in Pinedale on December 6, 2014, and who has known Judge Neely personally since 2006, stated that although she “do[es] not share [Judge Neely’s] beliefs regarding marriage,” she has “no doubt whatsoever that [Judge Neely] is fair and impartial as a judge” and “has always treated all individuals respectfully and fairly . . . regardless of their sexual orientation.” Stevens Aff. ¶¶ 1-3, 5.
- Ms. Stevens’s wife, Kathy Anderson, who knows Judge Neely in both a personal and professional capacity, similarly affirmed that she has “no doubt that [Judge Neely] will continue to treat all individuals respectfully and fairly inside and outside her courtroom, regardless of their sexual orientation.” Anderson Aff. ¶¶ 2-3, 5. Ms. Anderson further stated her belief, as a member of the LGBT community, that “it would be obscene and offensive to discipline Judge Neely for her statement to [Mr.] Donovan about her religious beliefs regarding marriage.” *Id.* ¶ 5.
- If Judge Neely ever received a request to perform a same-sex marriage (which has never occurred), she would ensure that the couple received the services they requested by “very kindly giv[ing] them names and phone numbers of other magistrates who could do that wedding.” Neely Dep. at 71-72 (Ex. 10); Neely Aff. ¶ 31.
- While Judge Neely’s religious convictions preclude her from personally officiating at same-sex weddings, she has never questioned the legality of same-sex marriage in Wyoming. Neely Aff. ¶ 33. If a case were to come before her that required her to recognize or afford rights based on a same-sex marriage, it is undisputed that she would recognize that marriage and afford the litigant all the rights that flow from it. *Id.* at ¶ 32.

The undisputed evidence thus shows that Judge Neely is not prejudiced against members of the LGBT community. Therefore, Judge Neely did not violate Rule 2.3.

B. Judge Neely Did Not Violate Rule 2.2.

Rule 2.2 provides that “[a] judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.” W.C.J.C., R. 2.2. This Rule applies only to judges’ conduct when deciding cases between parties. The Rule’s comments make this clear. Comment 1 indicates

that the Rule seeks to “ensure impartiality and fairness *to all parties*.” *Id.* at cmt. 1 (emphasis added). And Comments 2 and 3 emphasize that the Rule’s focus is on judges’ “applying and interpreting the law” in cases. *Id.* at cmt. 3; *see also Id.* at cmt. 2 (focusing on judges’ actions in “interpret[ing] and apply[ing] the law”). The Code’s definition of “impartiality”—which incorporates “definitions accepted by the [U.S.] Supreme Court in *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002),” Garwin, *supra*, at 92—also indicates that Rule 2.2 applies only in the context of judges deciding cases between parties. Obviously contemplating the litigation context, “impartiality” is defined to mean the “absence of bias or prejudice in favor of, or against, *particular parties or classes of parties*, as well as maintenance of an open mind *in considering issues that may come before a judge*.” W.C.J.C., Terminology (emphasis added); *see also White*, 536 U.S. at 775-76, 778 (observing that the “root meaning” of impartiality—the “traditional sense in which the term is used”—“is the lack of bias for or against either *party to [a] proceeding*,” and that another possible definition is “open-mindedness” in the sense that a judge would “remain open to persuasion[] *when the issues arise in a pending case*”) (emphasis added).²

But no evidence suggests that Judge Neely has refused to “uphold [or] apply the law” in deciding cases brought before her. Nor is there any evidence that Judge Neely has refused to decide cases “fairly” or “impartially.” In fact, the undisputed evidence shows that Judge Neely treats fairly and impartially all litigants who appear before her, including LGBT individuals. *See Anderson Aff.* ¶¶ 3, 5; *Stevens Aff.* ¶¶ 3, 5; *Wood Aff.* ¶¶ 4-5, 7; *Jones Aff.* ¶¶ 5-6, 8, 11; *Carlson Aff.* ¶¶ 5-6; *Eversull Aff.* ¶¶ 4-6; *Smith Dep.* at 34-36 (Ex. 8). And the Commission admits that it has not received any complaints regarding Judge Neely’s performance on the bench. *See Commission’s Answer to Interrogatories Nos. 5-6 (Ex. 22).*

² The Annotated Model Code confirms the litigation-context focus of Rule 2.2. Based on their review of many cases, the authors of that treatise conclude: “[T]his Rule directs the judge to follow the rule of law *when deciding cases*. . . . [It] link[s] the judge’s *obligation to decide cases with impartiality* to a corresponding duty to apply the law.” Garwin, *supra*, at 93-94 (citing eight cases).

Moreover, Judge Neely's religious beliefs about marriage do not in any way affect how she decides cases. Given the types of the cases that come before her—most of which involve traffic and parking violations, animal control, public intoxication, general nuisances, and similar matters—it is unlikely that a case would ever require her to recognize or afford rights based on a same-sex marriage. Neely Aff. ¶ 32. But if such a case were before her, it is undisputed that she would recognize that marriage and afford the litigant all the rights that flow from it. *Id.* at ¶ 32.

Additionally, Judge Neely's response to Mr. Donovan does not violate Rule 2.2 because it does not indicate an unwillingness to follow the law. As stated above, Wyoming law does not require circuit court magistrates like Judge Neely to officiate at any weddings, let alone to officiate at all of them. Wyo. Stat. § 20-1-106(a) (Ex. 6). Not surprisingly, then, no binding legal authority requires circuit court magistrates with religious beliefs like Judge Neely's to solemnize marriages that conflict with their faith. Hence, Judge Neely did not refuse to uphold or apply the law.³

Nor did Judge Neely's response to Mr. Donovan indicate a refusal to "impartially" perform a "duty." As explained above, neither Judge Neely nor any other circuit court magistrate has a "duty" to officiate at a marriage. *See* Wyo. Stat. § 20-1-106(a) (Ex. 6); *supra* at 8-9. In addition, Judge Neely did not violate the "impartially" requirement, which calls for the "absence of bias or prejudice in favor of, or against, . . . parties." W.C.J.C., Terminology. As shown above, Judge Neely's comments about marriage did not constitute "bias or prejudice" against any individuals (including members of the LGBT community)—much less bias against a *party* appearing before her. *See supra* at 10-11.

Comparing the Code's definition of "impartiality" with the U.S. Supreme Court's decision in *White*, the case from which the Code drew that definition, further demonstrates that Judge Neely

³ Regardless of what state statutory law requires, the various constitutional protections discussed below forbid the government from punishing Judge Neely for her religious speech and exercise. *See infra* at 18-44.

has not contravened the kind of impartiality mandated by the Code. The *White* Court observed that the “root meaning” of impartiality, the “traditional sense in which the term is used,” “is the lack of bias for or against either *party* to [a] proceeding.” 536 U.S. at 775-76. The Court juxtaposed that classic, party-based understanding of impartiality with an issue-based definition that requires a “lack of preconception in favor of or against a particular *legal [issue]*.” *Id.* at 777. The Court noted that such issue-based impartiality was not required, explaining that it would be “virtually impossible” and not “desirable” to require “judges who d[o] not have preconceived views on legal issues.” *Id.* at 777-78. In other words, the *White* Court clearly distinguished between neutrality toward a party or individual, which is required, and neutrality concerning an issue, which is not. The Code now reflects this distinction. Indeed, it defines impartiality to require an “absence of bias or prejudice in favor of, or against, . . . parties,” but not to require agnosticism on issues. W.C.J.C., Terminology. Here, Judge Neely’s comments regarding marriage reflect reasonable and well-grounded views about the *issue* of marriage. They do not express bias or prejudice against any *party or individual* (including LGBT individuals). Her speech thus does not constitute the type of party-based bias that the Code seeks to eliminate.

For all these reasons, Judge Neely did not violate Rule 2.2.

C. Judge Neely Did Not Violate Rule 1.2.

Rule 1.2 provides that “[a] judge shall act at all times in a manner that promotes public confidence in the . . . impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.” W.C.J.C., R. 1.2. The Commission believes that Judge Neely’s expression of her religious beliefs about marriage undermines her “impartiality” and creates an “appearance of impropriety.” *See* Commission’s Answer to Interrogatories Nos. 2, 4 (Ex. 22). But the undisputed evidence contradicts the Commission’s Rule 1.2 claim.

That claim fails for a threshold reason—namely, because Rule 1.2 prohibits “conduct,” not speech. The text of the Rule and its comments exclusively address “conduct.” *See* W.C.J.C., R. 1.2 (“A judge shall *act*”); *id.* at cmt. 1 (using the word “conduct” three times); *id.* at cmt. 3 (using the word “conduct” twice); *id.* at cmt. 5 (same). Unlike other provisions in the Code, *see* W.C.J.C., R. 2.3(B) (“A judge shall not . . . by *words* or conduct manifest bias”) (emphasis added), Rule 1.2 and its comments do not ever mention expression. Speech thus falls outside the scope of the Rule. In this case, the Commission has not pointed to any allegedly improper conduct on the part of Judge Neely, but instead focused on the expression of her religious beliefs about marriage. Accordingly, Rule 1.2 does not apply here. (The Code’s drafters had good reason for limiting this Rule to conduct: as explained below, the Rule is so vague that if it extends to expression, it would unconstitutionally restrict much protected speech. *See infra* at 39-44.)

Further analysis of the Rule 1.2 claim hinges on the perceptions of a reasonable member of the public, who must determine whether Judge Neely’s response to Mr. Donovan creates an appearance of impropriety or undermines the public’s perception of her impartiality when deciding cases. The test is whether Judge Neely’s expression about marriage “would create in reasonable minds a perception that [she] violated th[e] Code or engaged in other conduct that reflects adversely on [her] . . . impartiality.” W.C.J.C., R. 1.2 cmt. 5. This test is “an objective one.” Garwin, *supra*, at 61-62 (citing cases). It is analyzed from the perspective of a “reasonable person knowing all the circumstances” including all relevant facts, rules, and laws. *Boland*, 975 So. 2d at 895.⁴

A reasonable person assessing the Commission’s Rule 1.2 claim would know the following undisputed facts and pertinent law, all of which, when taken together, contradict the Commission’s

⁴ Some of the language in Rule 1.2 “is akin to the language of Rule 2.11 wherein a judge’s disqualification is mandated whenever a judge’s impartiality ‘might reasonably questioned.’” Garwin, *supra*, at 61. Thus, case law construing judicial-disqualification rules is instructive here, and that authority confirms that the reasonable person possesses expansive knowledge about the relevant circumstances. *See, e.g., United States v. Holland*, 519 F.3d 909, 914 (9th Cir. 2008) (noting that the “reasonable person” is not someone who is “hypersensitive or unduly suspicious,” but rather a “well-informed, thoughtful observer” who “understand[s] all the relevant facts” and “has examined the record and law”).

baseless assertion that a “reasonable member of society” would conclude that Judge Neely could not be impartial to “LGBT individuals in other proceedings before her.” Commission’s Answer to Interrogatories No. 2 (Ex. 22):

- Judge Neely has served as Pinedale Municipal Judge for approximately 21 years and as a circuit court magistrate for approximately 14 years. Neely Aff. ¶¶ 3, 5. She is well respected in the community as a wise woman and a fair and impartial judge dedicated to public service. Smith Dep. at 34-36 (Ex. 8); Haws Dep. at 58-59 (Ex. 3); Anderson Aff. ¶¶ 3, 5; Stevens Aff. ¶¶ 3, 5; Wood Aff. ¶¶ 4-5, 7; Jones Aff. ¶¶ 5-6, 8, 11; Carlson Aff. ¶¶ 5-6; Eversull Aff. ¶¶ 4-6.
- During her long judicial career, Judge Neely has never had a complaint filed against her with the Commission, been disciplined by the Commission, or been accused of harboring or exhibiting bias, prejudice, or partiality by anyone who has appeared before her in court. *See* Commission’s Response to Requests for Admission Nos. 5, 6, 9 (Ex. 9); Neely Aff. ¶ 11.
- As a circuit court magistrate, Judge Neely possesses the discretionary power to solemnize marriages, but does not have a legal duty to perform weddings. Wyo. Stat. § 20-1-106(a) (Ex. 6).
- Magistrates and other judges may decline to perform marriage ceremonies for a whole host of reasons—if they want to perform weddings only for close friends and family, if they want to reserve certain times of the week for family, or if the proposed wedding location is too far away in the opinion of the judge. *See* Soto Dep. at 151-54 (Ex. 7); Haws Dep. at 62-63 (Ex. 3); Smith Dep. at 41-44 (Ex. 8).
- Judge Neely did not proactively seek to communicate her religious beliefs about marriage to the public. Neely Aff. ¶ 40. In early December 2014, Mr. Donovan called Judge Neely out of the blue and asked her if she was excited to be able to start performing same-sex marriages. Neely Dep. at 82-83, 87 (Ex. 10); Neely Aff. ¶ 35. Judge Neely answered reflexively and truthfully, stating that her religious belief that marriage is the union of one man and one woman precludes her from officiating at same-sex weddings. Neely Dep. at 87-88 (Ex. 10); Neely Aff. ¶ 37.
- If Judge Neely were to receive a request to perform a same-sex marriage (which has never happened), she would ensure that the couple received the services that they requested by “very kindly giv[ing] them names and phone numbers of other magistrates who could do that wedding.” Neely Dep. at 71-72 (Ex. 10); Neely Aff. ¶ 31.
- LGBT citizens who know Judge Neely, including those who know about her religious beliefs regarding marriage and her inability to solemnize same-sex marriages, do not question her impartiality as a judge even in cases that involve members of the LGBT community. Anderson Aff. ¶¶ 3, 5; Stevens Aff. ¶¶ 3-5.
- Generally, Judge Neely does not know the sexual orientation of the parties who appear before her in court. Neely Aff. ¶ 13. She does not ask anything about the sexual orientation

of any litigant, and the types of issues that she adjudicates—most of which involve traffic and parking violations, animal control, public intoxication, general nuisances, and similar matters—do not require parties to disclose facts about their sexual orientation. *Id.* at ¶ 13.

- Judge Neely has never questioned the legality of same-sex marriage in Wyoming. Neely Aff. ¶ 33. If a case were to come before her that required her to recognize or afford rights based on a same-sex marriage, it is undisputed that she would recognize that marriage and afford the litigant all the rights that flow from it. *Id.* at ¶ 32.

No reasonable person aware of these facts would think that Judge Neely is incapable of impartiality in cases involving LGBT litigants. Rather, a reasonable person would conclude that Judge Neely is fair to all parties, that she is not prejudiced against anyone, and that her religious beliefs about marriage do not compromise her ability to adjudicate matters impartially.

The Commission’s position on the “appearance of impropriety” issue is essentially this: as soon as the reasonable person learns of Judge Neely’s religious beliefs regarding marriage, he concludes that she “cannot impartially pass judgment” when adjudicating traffic tickets and other routine municipal matters involving LGBT citizens. Commission’s Answer to Interrogatories No. 11 (Ex. 22). But no one believes this, especially not the well-informed reasonable person; thus the Commission’s Rule 1.2 claim must fail.

D. Judge Neely Did Not Violate Rule 1.1.

Rule 1.1 provides that “[a] judge shall comply with the law, including the Code of Judicial Conduct.” W.C.J.C., R. 1.1. That Rule “addresses the judge’s duty to comply with the law in his or her daily life.” Garwin, *supra*, at 93; *see also* Charles Gardner Geyh et al., *Judicial Conduct and Ethics* 2-7 (5th ed. 2013) (“[T]he responsibility to comply with the law relates primarily to the judge’s general duty to obey the law in everyday life, and is directed at judges who commit criminal acts.”). The Commission, however, has made no allegation (nor could it) that Judge Neely fails to follow the law in her personal life, and thus its attempt to discipline her under this Rule lacks merit.

In summary, because Judge Neely has not violated any of the four Rules that the Commission cites in its Notice, this matter must be dismissed in its entirety.⁵

III. Applying the Code to Punish Judge Neely Violates Her Rights to the Free Exercise of Religion and Free Speech under the U.S. and Wyoming Constitutions.

The Commission's attempt to remove Judge Neely from the bench not only lacks support in the Code, it also violates her constitutional rights to the free exercise of religion and free speech, as shown below.

A. Applying the Code to Punish Judge Neely Violates Her Religious Freedom.

1. Applying the Code to Punish Judge Neely Imposes an Unconstitutional Religious Test.

Both the U.S. and Wyoming Constitutions forbid the government from creating a religious test for public office. *See* U.S. Const. amend. I; U.S. Const. art. VI, cl. 3; Wyo. Const. art. 1, § 18. Indeed, such religious tests are “abhorrent to our tradition” of religious freedom. *Torcaso v. Watkins*, 367 U.S. 488, 491 (1961) (quoting *Girouard v. United States*, 328 U.S. 61, 68 (1946)). Yet the Commission has established a religious test here by attempting to remove Judge Neely from the bench because of her religious beliefs about marriage. *See* Notice ¶¶ A.4, A.8, B.2 (Ex. 34).

State Constitutional Analysis. The Wyoming Constitution expressly forbids a religious test for judicial office predicated upon a person's religiously informed opinions: “[N]o person shall be rendered incompetent to hold any office of trust . . . or to serve as a . . . juror[] because of his *opinion on any matter of religious belief whatever.*” Wyo. Const. art. 1, § 18 (emphasis added). “Someone who holds an office of trust . . . [i]n public affairs” includes a “person holding public office under a . . . state . . . government, and authorized by that government to exercise some specific function.” *Black's Law Dictionary* (10th ed. 2014) (defining the word “officer”). Judges

⁵ The Commission has alleged in its Notice that Judge Neely's “stated position with respect to same sex marriage” “implicates” not only the rules discussed above, but also Canons 1 and 2. *See* Notice ¶ B.1 (Ex. 34). Yet a Canon cannot form the predicate for discipline. *See* W.C.J.C., Scope (“[A] judge may be disciplined only for violating a Rule”).

surely fall within that definition. Ignoring this state constitutional protection, the Commission, upon learning Judge Neely's religious beliefs about marriage, declared that her "stated position with respect to same sex marriage precludes her" from remaining a judge. Notice ¶ B.2 (Ex. 34). That obviously attempts to "render[]" her "incompetent to hold" a judicial position "because of [her] opinion on a[] matter of religious belief." It is thus presumptively forbidden by the Wyoming Constitution.

The only limitation on this constitutional protection is if a public official seeks to "excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state." Wyo. Const. art. 1, § 18. But no evidence remotely suggests, and no credible argument can establish, that Judge Neely's religious beliefs or her peaceful expression of those beliefs in response to a reporter's question fosters licentiousness (i.e., lewdness) or jeopardizes public safety. Consequently, the state constitution forecloses the Commission's attempt to remove Judge Neely.

Federal Constitutional Analysis. The Commission's efforts to remove Judge Neely are also prohibited by the U.S. Constitution. *See* U.S. Const. amend. I; U.S. Const. art. VI, cl. 3. The U.S. Supreme Court has steadfastly declined "to open up the way for government, state or federal, to restore the historically and constitutionally discredited policy" of foreclosing "public offices to persons who have . . . a belief in some particular kind of religious concept." *Torcaso*, 367 U.S. at 494. Indeed, the Court has rejected religious tests for officials operating in a legislative role, *see McDaniel v. Paty*, 435 U.S. 618, 629 (1978) (plurality) (holding that a state cannot forbid a minister from a legislative role), and for officials appointed to serve in other public offices, *see Torcaso*, 367 U.S. at 496 (holding that a state cannot withhold the office of notary public from a person unwilling to declare a particular religious belief). That same ban on religious tests also applies to the judiciary. *See Feminist Women's Health Ctr. v. Codispoti*, 69 F.3d 399, 401 (9th Cir. 1995) (Noonan, J.)

(concluding that the government may not restrict the role of judges, let alone exclude them entirely, because of their religious beliefs about an issue).

The Commission's position in this case establishes a religious test because beliefs about marriage necessarily draw religious lines. As a member of the Lutheran Church, Missouri Synod (LCMS), Judge Neely sincerely believes that marriage is the union of one man and one woman, and that she cannot in good conscience solemnize any marriage outside of that context. Neely Aff. ¶ 23. But if she were an adherent of a Christian denomination like the United Church of Christ (UCC), she would be able to officiate at same-sex marriages. *See* United Church of Christ, *Equal Marriage Rights for All* (Connelly Aff., Ex. 41). Thus, by making her views on marriage a litmus test for remaining a judge, the Commission has established a religious test—just as surely as if it had declared that members of the UCC may be judges but that members of the LCMS are disqualified.

In other words, the Commission's position "as much imposes a test for office based on religious conviction as one based on denominational preference." *McDaniel*, 435 U.S. at 632 (Brennan, J., concurring). But the government may not prefer the members of some religions over others. *Torcaso*, 367 U.S. at 495; *see also* *Fowler v. Rhode Island*, 345 U.S. 67, 69-70 (1953) (invalidating government action that prohibited Jehovah's Witnesses from engaging in conduct that was permitted for Catholics). Because the Commission seeks to "establish[] as a condition of office the willingness to eschew certain protected religious [beliefs and] practices" about marriage, *McDaniel*, 435 U.S. at 632 (Brennan, J., concurring), the logic of cases like *McDaniel*, *Torcaso*, and *Codispoti* forbids application of the Code under these circumstances. This sort of religious test is so "abhorrent to our tradition" of religious freedom, *Torcaso*, 367 U.S. at 491, and so targeted toward religious belief and expression that the Constitution categorically forbids it—without the need to engage in strict-scrutiny analysis. *See* *McDaniel*, 435 U.S. at 634-35 (Brennan, J., concurring); *id.* at 641 (explaining that "[g]overnment . . . may not remove [people] from office merely for making

public statements regarding religion”); *id.* at 642-43 (Stewart, J., concurring); *Torcaso*, 367 U.S. at 496.

2. Applying the Code to Punish Judge Neely Violates Her Free-Exercise Rights.

The Commission not only seeks to create an impermissible religious test for judicial office, it attempts to violate Judge Neely’s liberty guaranteed by the general constitutional safeguards protecting the free exercise of religion. Both the U.S. and Wyoming Constitutions prohibit the government from restricting the free exercise of religion. *See* U.S. Const. amend. I; Wyo. Const. art. 1, § 18; Wyo. Const. art. 21, § 25. Yet the Commission disregards those guarantees of liberty.

State Constitutional Analysis. The protection for the free exercise of religion available under the Wyoming Constitution is even broader than the expansive protection guaranteed under the U.S. Constitution.⁶ Three reasons demonstrate why this is so.

First, the language of the relevant provisions of the state constitution is more expansive in favor of liberty than the language in the federal constitution. The Free Exercise Clause of the federal constitution succinctly provides that the government shall not “prohibit[] the free exercise [of religion],” U.S. Const. amend. I, whereas the Wyoming Constitution sweepingly declares:

The free exercise and enjoyment of religious profession and worship without discrimination or preference shall be forever guaranteed in this state, and no person shall be rendered incompetent to hold any office of trust or profit, or to serve as a witness or juror, because of his opinion on any matter of religious belief whatever; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state.

Wyo. Const. art. I, § 18. It further states that “[p]erfect toleration of religious sentiment shall be secured, and no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship.” Wyo. Const. art. 21, § 25. Thus, while the First

⁶ No Wyoming court has addressed this question, but based on the principles that Judge Neely argues below, those courts should conclude that state free-exercise protection is broader than federal free-exercise protection.

Amendment's concise free-exercise protection is robust, the freedom guaranteed by the Wyoming Constitution—which promises “perfect toleration of religious sentiment” and free religious exercise “without discrimination or preference”—is broader still.

Second, other states with similarly expansive free-exercise language apply more stringent standards of constitutional review than those applied by courts interpreting the U.S. Constitution. *See, e.g., State v. Hershberger*, 462 N.W.2d 393, 397-99 (Minn. 1990) (concluding that the free-exercise language in the Minnesota Constitution “is of a distinctively stronger character than the federal counterpart,” and applying a form of heightened scrutiny to review a state free-exercise claim); *First Covenant Church of Seattle v. City of Seattle*, 840 P.2d 174, 186 (Wash. 1992) (concluding that the free-exercise language in the Washington Constitution, which, similar to the Wyoming Constitution, says that no one “shall be molested or disturbed in person or property on account of religion,” is “significantly . . . stronger than the federal constitution” and thus requires more stringent scrutiny); *Humphrey v. Lane*, 728 N.E.2d 1039, 1044-45 (Ohio 2000) (concluding that “the Ohio Constitution’s free exercise protection is broader” than the federal protection, and applying a more stringent standard than the federal test to resolve the state free-exercise claim of a government employee). Likewise, a more stringent standard applies here.

Third, Wyoming’s constitutional history demonstrates that the state constitution affords strong protection for religious liberty. In particular, the Preamble confirms that protecting religious freedom was an overriding goal of the framers: “We, the people of the State of Wyoming, grateful to God for our civil, political and *religious liberties*, and *desiring to secure them to ourselves and perpetuate them to our posterity*, do ordain and establish this Constitution.” Wyo. Const. Preamble (emphasis added). Additionally, the religious-liberty protection found in Article 1, Section 18 is located within the Declaration of Rights and thus should, consistent with the framers’ intent, be construed under a “principle of liberal construction” that broadly protects individual liberties.

Vasquez v. State, 990 P.2d 476, 485 (Wyo. 1999) (quoting Robert B. Keiter and Tim Newcomb, *The Wyoming State Constitution, A Reference Guide* 11-12 (1993)). Moreover, the framers built in an additional safeguard for religious freedom: Article 21, Section 25—which guarantees “[p]erfect toleration of religious sentiment” and prohibits the government from disturbing anyone “in person or property on account of his or her mode of religious worship”—cannot be revoked “without the consent of the United States.” Wyo. Const. art. 21, § 25. Wyoming’s constitutional history thus demonstrates a keen interest in expansively protecting religious freedom.

For these reasons, the free-exercise protections of the state constitution are even broader than the expansive protections afforded under the federal constitution. Because the Commission seeks to penalize and discriminate against Judge Neely on account of her religious beliefs and expression, the free-exercise protections of the Wyoming Constitution apply here. The only justification that the state constitution allows for infringing Judge Neely’s “liberty of conscience” is if her beliefs or expression constitute “acts of licentiousness” or “practices inconsistent with the peace or safety of the state.” Wyo. Const. art. 1, § 18; *see, e.g., Hershberger*, 462 N.W.2d at 397 (construing identical language in the Minnesota Constitution and concluding that “[o]nly the government’s interest in peace or safety or against acts of licentiousness will excuse an imposition on religious freedom”). But no evidence remotely suggests, and no credible argument can establish, that Judge Neely’s religious beliefs or her peaceful expression of those beliefs in response to a reporter’s question fosters licentiousness (i.e., lewdness) or jeopardizes public safety. Wyoming’s free-exercise guarantees thus prohibit the Commission from punishing Judge Neely.

Federal Constitutional Analysis. Federal free-exercise claims are subject to differing levels of scrutiny depending on the context in which they arise. *Axson-Flynn v. Johnson*, 356 F.3d 1277, 1294 (10th Cir. 2004). In this case, there are four independent reasons why Judge Neely’s federal

free-exercise claim is subject to strict-scrutiny analysis, the most stringent standard of constitutional review, one that is rarely satisfied.

First, strict scrutiny applies because the Commission's enforcement of the Code provisions at issue is not neutral or generally applicable. State action "burdening religious practice that is not neutral or not of general application must undergo the most rigorous of scrutiny." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993). The government does not act neutrally toward religion, nor does it generally apply its governing rules, if it targets or discriminates against religiously motivated speech or conduct. *Id.* at 534, 542-43; *see also Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly*, 309 F.3d 144, 165 (3d Cir. 2002) (discussing neutrality and general applicability in further detail).

Here, the Commission applies the Code in a manner that targets religious beliefs like Judge Neely's, and thus strict scrutiny is the appropriate standard. Rule 2.3 purports to ban "words or conduct" that manifest any form of bias. *See* W.C.J.C., R. 2.3(B) (including a *non-exhaustive* list—"including but not limited to"—that specifies some prohibited kinds of bias but not confining the Rule to those listed). But the Commission applies that Rule in a manner that singles out Judge Neely because of her religious views. For example, the Commission does not seek to remove judges who, in declining to officiate some weddings, manifest bias against strangers, people who schedule weddings at distant locations, or individuals who schedule weddings outside of normal office hours. *See, e.g.,* Soto Dep. at 151-54 (Ex. 7); Haws Dep. at 62-63 (Ex. 3); Smith Dep. at 41-44 (Ex. 8). Moreover, circuit court magistrates have complete discretion to set their fees for weddings, *see* Haws Dep. at 68-69 (Ex. 3), and in that way, may manifest bias based on "socioeconomic status"—a classification that, like "sexual orientation," is listed in Rule 2.3. In contrast, however, the Commission seeks to strip Judge Neely of her judicial positions because she stated that her religious

beliefs about the nature of marriage preclude her from presiding over certain weddings.⁷ This selective enforcement, which targets Judge Neely's religious beliefs, shows that the Commission is not acting neutrally toward religion, that it is not generally applying its rules, and that strict scrutiny is the appropriate standard of review.⁸

Second, strict scrutiny applies because the Commission seeks to punish Judge Neely for expressing her religious beliefs. The heart of "[t]he free exercise of religion" is "the right to believe and profess whatever religious doctrine one desires." *Emp't Div., Dep't of Human Res. of Or. v. Smith*, 494 U.S. 872, 877 (1990) (emphasis added). The U.S. Supreme Court has thus consistently provided the utmost protection for religious belief and expression about religious beliefs, *see id.* at 877-80, particularly when the government "impose[s] special disabilities on the basis of religious views" or the expression of those views, *id.* at 877. That, of course, is exactly what the Commission attempts to do here. Thus, unlike certain government restrictions on religiously motivated *conduct*, some of which are not subject to strict scrutiny, *see id.* at 878-79, government punishment for religious *expression* is subject to that demanding standard.

Third, strict scrutiny is the appropriate standard because the Code provisions that the Commission seeks to apply call for "individualized governmental assessment[s]." *Smith*, 494 U.S. at 884. When regulations require "individualized governmental assessment of the reasons" for the allegedly unlawful speech or conduct, strict scrutiny governs. *Id.* Thus, the U.S. Supreme Court has

⁷ That the Commission treats Judge Neely different from all other circuit court magistrates is also shown in its response to Request for Admission No. 4. There, the Commission admitted that circuit court magistrates in general "are not required to perform any marriage ceremonies under Wyoming law," but maintained that somehow the law was different for Judge Neely. Commission's Response to Requests for Admission No. 4 (Ex. 9).

⁸ The Commission's hostility toward Judge Neely's religious beliefs and expression is also shown through (1) its now-dismissed and admittedly unconstitutional attempt to punish Judge Neely for selecting as her counsel a nonprofit legal organization that shares her religious views about marriage, *see* Amended Notice ¶¶ A.9, A.10, B.2 (Ex. 36); (2) the public pro-same-sex-marriage advocacy efforts of the Commission's Executive Director, *see* Soto Dep. at 31-33, 101-02 (Ex. 7); Artery Dep. at 31-33 (Ex. 19); and (3) the Commission's use of its rarely employed "own motion" procedure and its request for the seldom-sought discipline of removal, *see* Soto Dep. at 58-59 (Ex. 7); Tiedeken Dep. at 103-04 (Ex. 25).

held that strict scrutiny applies to the denial of benefits distributed through “unemployment compensation programs” because “their eligibility criteria invite consideration of the particular circumstances behind an applicant’s unemployment.” *Id.* The Court has also concluded that laws regulating the killing of animals create “a system of individualized governmental assessment” because those laws “require[] an evaluation of the particular justification for the killing” to determine whether the conduct is proscribed. *Lukumi*, 508 U.S. at 537 (quotation marks omitted).

Similarly here, the Commission has created a system of individualized assessments. Rules 2.2 and 2.3, for example, require the Commission to individually assess a judge’s speech or conduct, as well as the motivations for that speech or conduct, to determine whether she has a “bias or prejudice” or lacks impartiality. *See* W.C.J.C., R. 2.2 (requiring that judges act “impartially”); W.C.J.C., R. 2.3(A) (forbidding “bias or prejudice”). In this case, the Commission specifically asserts that “Judge Neely’s words and actions demonstrate a lack of impartiality” and a “bias or prejudice towards members of the LGBT community.” Commission’s Answer to Interrogatories Nos. 2-3 (Ex. 22). By affording the government wide discretion when applying the Code to particular circumstances, and by inviting the Commission to scrutinize what is in the minds of individual judges, regulations like Rules 2.2 and 2.3 create far too much latitude for government discrimination against religion and thus necessitate strict-scrutiny analysis.

Fourth, strict scrutiny applies because the Commission’s prosecution attempt violates a “hybrid” of constitutional rights. *See Smith*, 494 U.S. at 881-82. A federal free-exercise claim requires strict-scrutiny analysis when free-exercise rights are combined “with other constitutional protections, such as freedom of speech.” *Id.* at 881. That heightened standard thus applies to government action that “attempt[s] to regulate . . . the communication of religious beliefs.” *Id.* at 882. Because the Commission seeks to infringe not only Judge Neely’s free-exercise rights, but also her free-speech rights, as discussed below, *see infra* at 27-30, strict scrutiny applies.

For all these reasons, strict scrutiny applies to Judge Neely's federal free-exercise claim, and as explained below, *see infra* at 30-35, the Commission cannot satisfy that demanding standard. Consequently, Judge Neely should prevail on her federal free-exercise claim, and summary judgment should be granted in her favor.

3. Applying the Code to Punish Judge Neely Violates the Establishment Clause.

The Commission's attempt to apply the Code here also violates the Establishment Clause of the First Amendment to the U.S. Constitution and the corresponding provisions of the Wyoming Constitution. *See* U.S. Const. amend. I; Wyo. Const. art. 1, § 18; Wyo. Const. art. 21, § 25. The Establishment Clause forbids a state from "prefer[ring] one religion over another." *Everson v. Bd. of Educ. of Ewing Twp.*, 330 U.S. 1, 15 (1947); *see also Larson v. Valente*, 456 U.S. 228, 244 (1982) ("The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another."). But as explained above, *see supra* at 20-21, preferring some religions over others is precisely what the Commission would achieve through the claims asserted in this proceeding.

In addition, the Establishment Clause ensures that "[n]o person can be punished for . . . professing religious beliefs." *Everson*, 330 U.S. at 15-16. Yet it is undisputed that the Commission is seeking to punish Judge Neely for honestly expressing her religious convictions about marriage in response to a question. *See* Notice ¶¶ A.4, A.8, B.2 (Ex. 34). The Establishment Clause forbids that.

B. Applying the Code to Punish Judge Neely Violates Her Freedom of Expression.

Members of the state judiciary, including Judge Neely, enjoy the free-speech protections of the First Amendment to the U.S. Constitution and the correlative provisions of the Wyoming Constitution. *See White*, 536 U.S. at 788 (holding that a Minnesota canon of judicial conduct prohibiting candidates for judicial office from announcing their views on disputed legal or political

issues violated the First Amendment); *In re Sanders*, 955 P.2d 369, 375 (Wash. 1998) (stating that “[a] judge does not surrender First Amendment rights upon becoming a member of the judiciary”). The First Amendment forbids the government from “abridging the freedom of speech,” U.S. Const. amend. I; and the Wyoming Constitution guarantees that “[e]very person may freely speak, write and publish on all subjects.” Wyo. Const. art. I, § 20. Given that the Commission seeks to remove Judge Neely because of her constitutionally protected expression of her beliefs about marriage, *see* Notice ¶¶ A.4, A.8, B.2 (Ex. 34), its attempted application of the Code contravenes these constitutional liberties.

1. Applying the Code to Punish Judge Neely Discriminates Based on Viewpoint.

Applying the Code to remove Judge Neely for expressing her religious beliefs about marriage constitutes viewpoint discrimination because it favors some opinions over others on an issue of public concern. Viewpoint discrimination is constitutionally impermissible because the government cannot “regulate speech in ways that favor some viewpoints or ideas at the expense of others.” *Lamb’s Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 394 (1993) (quotation marks omitted). The government thus “must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.” *Rosenberger v. Rector and Visitors of the Univ. of Virginia*, 515 U.S. 819, 829 (1995).

Here, the Commission maintains that Judge Neely violated the Code because when asked if she was excited about performing same-sex marriages, she indicated that her religious belief that marriage is the union of one man and one woman precludes her from doing so. But if another judge faced with the very same question were to state that she supports same-sex marriage and would gladly perform those weddings, the Commission surely would not institute a disciplinary proceeding. Because the Commission applies the Code to punish a judge who expresses one view on this issue while permitting speech that expresses a contrary view, it engages in viewpoint

discrimination. *See Rosenberger*, 515 U.S. at 831 (holding that a public university’s denial of funding for a religious group’s student newspaper constituted unconstitutional viewpoint discrimination against an entire class of viewpoints).

Indeed, Rule 2.3 discriminates based on viewpoint much in the same way as the law struck down in *R.A.V. v. City of St. Paul, Minnesota*, 505 U.S. 377, 391-92 (1992). There, the law banned expression that “arouse[d] anger, alarm or resentment.” *Id.* at 380. Similarly, here, the Commission’s Rules forbid judges from “manifest[ing] bias or prejudice.” W.C.J.C., R. 2.3(B). In *R.A.V.*, the U.S. Supreme Court held that the challenged law discriminated based on “viewpoint” because it permitted speech that, in the government’s opinion, “argu[ed] *in favor of* . . . tolerance and equality,” while forbidding expression on the other side of an issue. 505 U.S. at 391. The same is true here—the Commission permits speech in favor of same-sex marriage, but seeks to discipline Judge Neely for her contrary views. Such patent viewpoint discrimination is a *per se* constitutional violation, *Lamb’s Chapel*, 508 U.S. at 394; and therefore, on this basis alone, Judge Neely is entitled to summary judgment in her favor.

2. Applying the Code to Punish Judge Neely Burdens Religious Expression and Discriminates Based on the Content of Speech.

In addition to discriminating based on viewpoint, the Commission’s attempt to punish Judge Neely also burdens core religious expression and discriminates based on the content of constitutionally protected speech. These two additional infirmities trigger strict-scrutiny analysis.

First, the Commission attempts to ban core religious speech by trying to remove Judge Neely because she stated her religious belief about marriage in response to Mr. Donovan’s question. *See* Notice ¶¶ A.4, A.8, B.2 (Ex. 34); Commission’s Answer to Interrogatories No. 8 (Ex. 22). Yet applying the Code under these circumstances is tantamount to a prohibition on religious expression—something the First Amendment does not allow. Indeed, “religious speech . . . is . . . fully protected under the Free Speech Clause,” and ensuring its protection is among the foremost

purposes of the First Amendment. *Capitol Square Rev. and Advisory Bd. v. Pinette*, 515 U.S. 753, 760 (1995). (“[I]n Anglo–American history . . . , government suppression of speech has so commonly been directed *precisely* at religious speech that a free-speech clause without religion would be Hamlet without the prince.”). Because the Commission is attempting to proscribe religious speech, which is at the core of our First Amendment freedoms, strict scrutiny is the proper test for Judge Neely’s free-speech claim. *White*, 536 U.S. at 774-75.

Second, the relevant Code provisions are content based, meaning that they discriminate against certain expression based on its content. “Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.” *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2227 (2015). More specifically, a law is content based if it “defin[es] regulated speech by its function or purpose.” *Id.* The relevant Code provisions are content based in this sense. Rule 2.3 defines prohibited speech as “words” that “manifest bias or prejudice.” W.C.J.C., R. 2.3(B). And Rules 1.2 and 2.2 similarly prohibit partiality. *See* W.C.J.C., R. 1.2 (requiring “impartiality”); W.C.J.C., R. 2.2 (requiring “impartial[]” performance). These Rules do not, however, forbid speech with other functions or purposes. Thus, because an examination of the content of speech is necessary to determine whether it violates these Rules, the Code discriminates based on content. Such “[c]ontent-based laws . . . are presumptively unconstitutional” and will be upheld only if the government overcomes strict scrutiny. *Reed*, 135 S. Ct. at 2226; *see also Jenevein v. Willing*, 493 F.3d 551, 558 (5th Cir. 2007) (applying strict scrutiny to a free-speech challenge to an order censuring a judge’s speech based on its content). Yet the Commission cannot satisfy strict scrutiny here, as explained in the next section.

C. Applying the Code to Punish Judge Neely Cannot Withstand Strict Scrutiny.

To satisfy strict scrutiny, the Commission must show that its actions are “necessary to serve a compelling state interest and that [they are] narrowly drawn to achieve that end.” *Burson v.*

Freeman, 504 U.S. 191, 198 (1992) (quotation marks and citation omitted); *see also White*, 536 U.S. at 774-75. Because the undisputed facts preclude the Commission from meeting this burden, summary judgment in favor of Judge Neely is warranted.

1. The Commission Does Not Have a Compelling Interest in Punishing Judge Neely.

State action that is reviewed under the strict-scrutiny standard “must advance interests of the highest order.” *Lukumi*, 508 U.S. at 546 (quotation marks omitted). Here, the Commission asserts that removing Judge Neely from the bench furthers its interests in maintaining impartiality and the appearance of impartiality within the judiciary (or, put differently, its interests in eliminating bias and the appearance of bias from the judiciary). *See* Commission’s Answer to Interrogatories Nos. 2, 3, 5, 7, 10, 11 (Ex. 22). But the Commission’s reliance on those interests does not satisfy its burden under strict scrutiny.⁹

To begin with, those asserted interests are not implicated here. In fact, they are belied by the undisputed evidence. The Commission’s only evidence for its claim that Judge Neely harbors or manifests an impermissible bias against LGBT individuals is her response to Mr. Donovan indicating that her religious beliefs about marriage preclude her from officiating at same-sex weddings. *See* Notice ¶¶ A.4, A.8, B.2 (Ex. 34); Commission’s Answer to Interrogatories No. 11 (Ex. 22). But as previously established, that response to Mr. Donovan is not evidence of bias against LGBT *individuals*; it is instead a reference to her sincerely held religious beliefs about *marriage*. *See supra* at 10-11. Notably, the evidence that does in fact speak to Judge Neely’s treatment of

⁹ The Commission also indicates that the state has an interest in ensuring that judicial officers follow the law and comply with the decisions of higher courts. *See* Commission’s Answer to Interrogatories Nos. 8, 10 (Ex. 22). But this interest is simply not relevant to the facts of this case. As previously shown, Wyoming law does not require circuit court magistrates like Judge Neely to officiate at any weddings, let alone to officiate at all of them. Wyo. Stat. § 20-1-106(a) (Ex. 6); *see also supra* at 8-9. Not surprisingly in light of that, no binding legal authority requires circuit court magistrates with religious beliefs like Judge Neely’s to solemnize marriages that conflict with their faith. Hence, Judge Neely did not refuse to follow the law or a decision of a higher court. Accordingly, Judge Neely’s response to Mr. Donovan’s question about marriage does not implicate the state’s interest in ensuring compliance with the law or the decisions of higher courts. But regardless of what state statutory law might require, the various constitutional protections discussed herein forbid the government from punishing Judge Neely for her religious speech and exercise.

LGBT individuals (evidence that is summarized above) uniformly demonstrates that she treats everyone fairly and without bias. *See supra* at 11. Because the Commission's purported interests are not implicated in this case, strict scrutiny is not satisfied.

Moreover, the Commission's asserted interests in maintaining impartiality and the appearance of impartiality are not compelling under these circumstances. *See Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430-31 (2006) (explaining that strict-scrutiny analysis requires a "focused" inquiry that "look[s] beyond broadly formulated interests" and asks what precise interest is furthered by applying its regulation to "the particular claimant" whose constitutional rights are being burdened). In *White*, the U.S. Supreme Court recognized that the word "impartiality"—whether discussing the actual "impartiality of the state judiciary" or the "appearance of the impartiality of the state judiciary"—is often a "vague" concept when used by state judicial commissions. 536 U.S. at 775. To the extent that "impartiality" means "the lack of bias for or against either party to [a] proceeding," preserving impartiality may be compelling. *Id.* at 775-76. But to the extent that "impartiality" means the "lack of preconception in favor of or against a particular legal [issue]," the *White* Court declared, maintaining impartiality "is not a compelling state interest." *Id.* at 777.

Here, Judge Neely stated her religious beliefs about the issue of marriage. She did not express a bias regarding any party to a judicial proceeding. Thus, the only interest in preserving impartiality that the Commission can invoke here is its interest in ensuring that judges lack preconceptions on the legal, social, and religious issue of marriage. But not only is that goal "virtually impossible" (because nearly all citizens have some opinions about the issue of marriage), the government's pursuit of that interest is not compelling, as the U.S. Supreme Court established in *White*. 536 U.S. at 777-78; *see also Miss. Comm'n on Judicial Performance v. Wilkerson*, 876 So. 2d 1006, 1015 (Miss. 2004) (holding that an interest in the appearance of impartiality does not

justify suppressing a judge's off-the-bench expression on issues of public concern); *In re Hey*, 452 S.E.2d 24, 33 (W. Va. 1994) (concluding that an interest in avoiding the appearance of impropriety does not justify punishing "speech on a matter of public interest when the speech does not pertain to pending or impending cases and is not within a specific prohibition of the Code or some other law").¹⁰ The Commission thus cannot satisfy the compelling-interest requirement of the strict-scrutiny test.

2. The Commission's Efforts to Achieve its Asserted Interests Are Not Narrowly Tailored.

Nor can the Commission satisfy the narrow-tailoring requirement of the strict-scrutiny test. "To survive strict scrutiny, . . . a State must do more than [identify] a compelling state interest—it must demonstrate that its law is *necessary* to serve the asserted interest," *Burson*, 504 U.S. at 199 (emphasis added), and that it does not "unnecessarily circumscribe protected expression" or conduct, *White*, 536 U.S. at 775 (quoting *Brown v. Hartlage*, 456 U.S. 45, 54 (1982)). These stringent obligations require the government to establish that its regulation is neither overbroad nor underinclusive, *Lukumi*, 508 U.S. at 546, and that it is "the least restrictive means of achieving" the purported government interest, *McCullen v. Coakley*, 134 S. Ct. 2518, 2530 (2014) (citing *United States v. Playboy Entm't Grp., Inc.*, 529 U.S. 803, 813 (2000)).

The Commission cannot satisfy the strictures of narrow tailoring because its proposed application of the Code is both overinclusive and underinclusive as an effort to pursue its asserted interests in maintaining judicial impartiality. It is overinclusive because it would remove from the

¹⁰ The Commission has not asserted an interest in ensuring that same-sex couples have access to marriage because such an argument would be futile. Since same-sex marriage was legalized in Wyoming, "[n]o one's been denied [the] opportunity" to get married. Haws Dep. at 109 (Ex. 3). Indeed, "[t]here are plenty of people in Sublette County who are willing to perform marriage ceremonies for same-sex couples." Anderson Aff. ¶ 4; *see also* Wood Aff. ¶ 8 ("There is no shortage of public officials in Pinedale or Sublette County willing to officiate at same-sex wedding ceremonies."); Artery Dep. at 37 (Ex. 19) (noting that "there are plenty of . . . officiants that are willing to officiate same-sex marriage"). More specifically, the record reflects that only two same-sex marriages have occurred in Sublette County, Neely Aff. ¶ 26; Wood Aff. ¶ 8; Haws Dep. at 109 (Ex. 3); Anderson Aff. ¶ 3; Stevens Aff. ¶ 3; and that a number of local judges and magistrates have already indicated that they are willing to solemnize same-sex marriages, Wood Aff. ¶ 8; Smith Dep. at 39 (Ex. 8); Haws Dep. at 109 (Ex. 3).

bench people of faith who, like Judge Neely, harbor no bias against members of the LGBT community and would treat them fairly and impartially in cases that come before them. And it is underinclusive because it would fail to remove judges who are actually biased against LGBT individuals but whose bias is hidden from public view (like, for example, a biased judge who has not been asked a question that exposes her bias). Because the Commission's proposed application of the Code would remove judges who do not undermine the impartiality of the bench while at the same time leaving in place judges who threaten that interest, it is at once overinclusive and underinclusive, and is thus not narrowly tailored.

Another feature of the Code illustrates the underinclusiveness of the Commission's efforts to remove biased judges from the bench. Rule 2.11 permits judges who have a "bias or prejudice" related to a specific proceeding to recuse themselves; those judges are not driven off the bench. W.C.J.C., R. 2.11(A)(1). The Code thus accepts the inescapable reality that the judiciary will include jurists with strong beliefs and even biases on certain matters, and it accommodates those judges' conflicts and biases by allowing them to recuse from particular proceedings. Yet when Judge Neely expressed her beliefs about marriage, she was not allowed to exercise her discretionary authority to perform weddings in a manner consistent with her faith, but instead told to end her career. By permitting judges with biases that affect their *mandatory* adjudicative duties to remain judges, while removing Judge Neely because her religious convictions inform her *discretionary* authority to perform marriages, the Commission shows that it inconsistently (and underinclusively) pursues its asserted interest in eliminating judges with biases.

Furthermore, the narrow-tailoring requirement is not satisfied because other reasonable, less-restrictive alternatives exist for the Commission to preserve judicial impartiality without violating judges' constitutional rights. *See Playboy Entm't Grp.*, 529 U.S. at 816 (explaining that "[w]hen a plausible, less restrictive alternative is offered," the state must "prove that the alternative

will be ineffective to achieve its goals[']"). Rather than removing Judge Neely, the Commission could, for example, apply the disqualification rules so that a party who thinks Judge Neely (or a judge with similar beliefs) cannot be impartial in a case is able, upon the requisite showing, to get a new judge for that matter. *Cf.* W.C.J.C., R. 2.11. Because the Commission can accomplish its asserted interests through this existing, less-restrictive means, a lack of narrow tailoring necessarily exists. *See Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2782 (2014) (noting that an already-established means of accommodating a religious conflict "demonstrate[s] that [the government] has at its disposal" a less restrictive alternative); *McCullen*, 134 S. Ct. at 2537-38 (noting that a law is not narrowly tailored when the conduct that the government seeks to eliminate "can readily be addressed through existing" laws).

Alternatively, if the Commission's concern is the impartiality of the wedding-solemnization process, it could easily establish a system that ensures the public can solemnize their weddings and judges can adhere to their convictions. For instance, the government could establish in each county one point of contact (like the county clerk's office or the circuit court clerk) for all requests that seek a public official to perform a wedding. That point of contact could acquire all relevant information about the requested wedding, find a willing and available judge, and put the couple in contact with that judge. Such an alternative is surely available. *See Haws Dep.* at 60-61 (noting that the circuit court clerk already receives wedding requests). These readily available, less restrictive alternatives establish that the Commission cannot satisfy strict scrutiny and that Judge Neely is entitled to summary judgment.

IV. This Proceeding Violates Judge Neely's Due Process Rights under the U.S. and Wyoming Constitutions.

From its inception, this proceeding has been and continues to be plagued with systemic risks of partiality sprinkled with evidence of actual bias against Judge Neely's beliefs about marriage. Taken together, these facts establish a violation of Judge Neely's right to due process of law under

the Fourteenth Amendment to the U.S. Constitution and Article I, Sections 6 and 7 of the Wyoming Constitution.

“[A] fair trial in a fair tribunal is a basic requirement of due process, [and] [t]his applies to administrative agencies which adjudicate as well as to courts.” *Withrow v. Larkin*, 421 U.S. 35, 46 (1975); *see also Riggins v. Goodman*, 572 F.3d 1101, 1112 (10th Cir. 2009) (“Impartiality of the tribunal is an essential element of due process.”). Due process goes beyond merely requiring an unbiased decisionmaker, however, and “endeavor[s] to prevent even the probability of unfairness.” *Withrow*, 421 U.S. at 47 (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)). One particular feature of some administrative agencies—the combination of investigatory, prosecutorial, and adjudicatory powers in the same officials—creates a risk of unfairness and thus raises due-process concerns. *See Walker v. City of Berkeley*, 951 F.2d 182, 185 (9th Cir. 1991) (holding that a city denied due process to its employee when its staff attorney functioned as the city’s attorney in the employee’s federal case and as decisionmaker in the post-termination hearing).

By virtue of the Commission’s design, every member of the Commission who acts in an investigatory and prosecutorial capacity in this case by sitting on the Investigatory Panel will, together with the remaining Commission members, vote on the ultimate disposition of this case and thereby also act in an adjudicatory role. *See Rules Governing the Commission on Judicial Conduct and Ethics*, Rule 16(e) (hereinafter “Commission Rules”) (“Upon a majority vote of *the entire Commission*, the Commission shall make its recommendation . . . to the Wyoming Supreme Court . . .”) (emphasis added);¹¹ *see also Soto Dep.* at 94-97 (Ex. 7); *Tiedeken Dep.* at 37 (Connelly Aff., Ex. 25). That five of the twelve Commission members who vote on the ultimate disposition of this

¹¹ These provisions of the Commission Rules also violate the separation-of-powers requirement of the Wyoming Constitution, which provides: “The powers of the government of this state are divided into three distinct departments: The legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted.” Wyo. Const. art. 2, § 1.

matter will have served in an investigatory and prosecutorial capacity creates an inherent risk of unfairness (after all, prosecutors often have an interest in ratifying their decision to prosecute).

Systemic unfairness also exists in that the Commission's Executive Director has authority to unilaterally select the members of the Investigatory and Adjudicatory Panels. Commission Rule 5(b); Soto Dep. at 110, 115, 132-33, 136, 138-39 (Ex. 7); Tiedeken Dep. at 46 (Ex. 25). Thus, one person has the power to orchestrate the trajectory of an entire proceeding. So if the Executive Director wants to see a particular judge disciplined, she can select for the Investigatory and Adjudicatory Panels those members most likely to prosecute and punish, while relegating to the sidelines those less likely to do so, knowing full well that the eight members on the Investigatory and Adjudicatory Panels can together bring about the desired outcome (regardless of what the other four members decide).

To be sure, the fact that investigative, prosecutorial, and adjudicative functions are performed within the same agency "does not, without more, constitute a due process violation. *Withrow*, 421 U.S. at 58. But assigning executive and judicial roles to the same officials in the same case becomes impermissible when additional facts and circumstances demonstrate that "the risk of unfairness is intolerably high." *Hicks v. City of Watonga*, 942 F.2d 737, 746-47 (10th Cir. 1991) (quotation marks and citations omitted); see also *Withrow*, 421 U.S. at 51-58. Here, the systemic risk of unfairness that arises from combining investigatory, prosecutorial, and adjudicatory powers in the five Commission members who serve on the Investigatory Panel, and granting the Executive Director unilateral appointment power over the Commission's Investigatory and Adjudicatory Panels, is compounded by evidence that the Executive Director is biased against Judge Neely's beliefs regarding marriage.

Throughout this proceeding, the Commission's Executive Director has been Ms. Wendy Soto. At the time that she became Executive Director, she also served on the Board of the LGBT

advocacy organization Wyoming Equality and participated in the group's legislative and legal advocacy in support of same-sex marriage. Soto Dep. at 30-33, 53-55 (Ex. 7). Ms. Soto's close friend and President of Wyoming Equality, Jeran Artery, has as part of his advocacy efforts expressed his belief that some people "should be fired, forced to step down[,] for believing that marriage is the union of one man and one woman." Artery Dep. at 36-37 (Ex. 19). In October 2013, after more than a year as the Commission's Executive Director, Ms. Soto finally resigned from the Board of Wyoming Equality because she "felt like it was inappropriate . . . , as the [Commission's] executive director, to be associated with Wyoming Equality" while the group actively pursued the legalization of same-sex marriage through litigation. Soto Dep. at 31-32, 101-02 (Ex. 7). Despite this acknowledgement, many months later Ms. Soto's appeared at a public rally on the steps of the state capitol, with sign in hand next to Mr. Artery, supporting the same-sex-marriage lawsuit. Artery Dep. at 31-33 (Ex. 19).

Other facts indicate that Ms. Soto combined her support for same-sex marriage and her position as Executive Director to initiate this proceeding against Judge Neely. It began when Ms. Soto overheard Mr. Artery and Ana Cuprill discussing Judge Neely, decided to engage in conversation with Ms. Cuprill, handed her a business card, and asked her to email a copy of Mr. Donovan's article. Cuprill Dep. at 76-77 (Connelly Aff., Ex. 15); Soto Dep. at 84-85 (Ex. 7). Without waiting for a formal complaint to be filed, Ms. Soto then initiated this disciplinary proceeding by emailing Mr. Donovan's article to an Investigatory Panel composed of Commission members that Ms. Soto selected. Soto Dep. at 111-114 (Ex. 7). This was the first and only time Ms. Soto has ever forwarded information about what she judged to be a possible Code violation to an Investigatory Panel without receiving a formal complaint. *Id.* at 112-115.

Moreover, the Commission's peculiar response to Judge Neely's defense further demonstrates that due process has been violated. Astonishingly, the Commission has alleged that

Judge Neely's decision to defend herself—or in the Commission's words, "her unwillingness to acknowledge that [she] . . . violate[d] the Code"—is itself a form of "judicial misconduct" warranting punishment. Commission's Response to Requests for Admission No. 1 (Ex. 9); *see also* Tiedeken Dep. at 109-11 (Ex. 25). In other words, the Commission told Judge Neely that exercising her due-process rights is itself impermissible.

In addition, after Judge Neely retained attorneys who share her views about marriage, the Commission sought to frustrate her defense by asserting that the very act of retaining her chosen counsel created additional Code violations. *See* Amended Notice ¶¶ A.9, A.10, B.2 (Ex. 36). And at Judge Neely's deposition, the Commission's attorney badgered her with inappropriate questions about her relationship with her attorneys and her attempts to discover evidence to support her defenses. *See* Neely Dep. at 103-08 (Ex. 10) ("Do you approve of the way these people [Judge Neely's attorneys] have conducted your defense in this case?"). The Commission's attorney also, in an obvious attempt to intimidate Judge Neely into forfeiting her defense, threatened her that if she were to lose, she "could be made to pay all of the Commission[']s . . . costs," which "are now into the tens of thousands of dollars." *Id.* at 105-06. This open hostility toward Judge Neely's decision to and manner of defending herself contravenes due process.

In short, the undeniable antagonism to Judge Neely's views and defense, combined with the systemic concerns discussed above, creates a "risk of unfairness" that is "intolerably high," thus violating Judge Neely's due-process rights. *Withrow*, 421 U.S. at 58; *Hicks*, 942 F.2d at 746-47.

V. The Code Provisions that the Commission Invokes to Punish Judge Neely Are Vague and Overbroad in Violation of the U.S. and Wyoming Constitutions.

Both the U.S. and Wyoming Constitutions forbid the government from adopting vague or overbroad laws that ban—or threaten to ban—a wide swath of constitutionally protected speech. *See* U.S. Const. amends. I & XIV; Wyo. Const. art. 1, §§ 6, 7, 20. This infirmity plagues the Code provisions that the Commission invokes in its quest to remove Judge Neely from the bench.

Vagueness. Laws must “give the person of ordinary intelligence a reasonable opportunity to know what is prohibited.” *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). A law is thus “void for vagueness if its prohibitions are not clearly defined.” *Id.* Failing to provide sufficient notice of the impermissible not only contravenes the most basic promise of due process (fair notice), it threatens expressive liberty, as this case illustrates, by arming unelected government officials with unfettered discretion to punish those whose views they dislike. *See Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1051 (1991) (“The prohibition against vague regulations of speech is based in part on the need to eliminate the impermissible risk of discriminatory enforcement”); *Cal. Teachers Ass’n v. State Bd. of Educ.*, 271 F.3d 1141, 1150 (9th Cir. 2001) (noting that vague laws permit “lower level officials” to resolve important policy questions “on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application”).

Vague laws also chill constitutionally protected expression because “[w]hen one must guess what . . . utterance may lose him his [job], one necessarily will steer far wider of the unlawful zone” by forgoing undeniably protected speech. *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 604 (1967) (quotation marks omitted). Thus, where, as here, the government applies its rules to punish protected expression, courts apply “a more stringent vagueness test,” *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 499 (1982), requiring specificity and clarity in all regulations that restrict speech, *see Cal. Teachers Ass’n*, 271 F.3d at 1150.

Here, however, the Code provisions that the Commission seeks to apply were not drafted with specificity and clarity—far from it in fact. To begin with, Rule 1.2 is the epitome of vagueness: it subjects judges to removal for creating “the appearance of impropriety” whether functioning in a “professional [or] personal” capacity. W.C.J.C., R. 1.2 & cmt. 1. Courts have recognized that such broad language, which Comment 3 admits is “cast in general terms,” *Id.* at cmt. 3, is “fraught with subjectivity and elasticity” that “create[s] problems when applied to expression” and causes judges

to forgo “participation in public discussion.” *Hey*, 452 S.E.2d at 33. Moreover, Rule 1.2 provides that judges should be punished if they fail to “act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.” W.C.J.C., R. 1.2. But in the words of one federal judge, “there simply is no way to determine permissible and impermissible conduct” from this amorphous terminology. *Spargo v. N.Y. State Comm’n on Judicial Conduct*, 244 F. Supp. 2d 72, 91 (N.D.N.Y.), *vacated on abstention grounds*, 351 F.3d 65 (2d Cir. 2003). All of this vague language in Rule 1.2 impermissibly empowers the Commission, as it has done in this case, to target judges whose views it considers improper.¹² The vagueness doctrine exists to prevent that.

Rule 2.3 is a similarly vague tool for the Commission’s use in punishing judges whose views it dislikes. By its express terms, the Rule forbids “words or conduct [that] manifest bias” on any basis. W.C.J.C., R. 2.3(B) (including a *non-exhaustive* list—“including but not limited to”—that specifies some prohibited kinds of bias but not confining the Rule to those listed). Or put differently, the Rule forbids expression of any opinion that the Commission deems inappropriate. This unbounded prohibition on “bias” highlights the vagueness of Rule 2.3, as does the inclusion of amorphous listed biases like “socioeconomic status.” *Id.* What exactly constitutes bias based on socioeconomic status? What if a judge says that she will not drive any car other than a Porsche? Does that violate the Rule? If not, why?¹³

In short, the Rules that the Commission relies upon in this case fail to give the person of ordinary intelligence a reasonable opportunity to know what is prohibited. Rather, those vague and

¹² See *In re Larsen*, 616 A.2d 529, 580-81 (Pa. 1992) (per curiam) (“Propriety . . . is often in the eye of the beholder. A given individual will find conduct to be within or beyond the bounds of propriety to the extent the conduct comports with that individual’s own highly subjective views of propriety. . . . [Thus], disciplinary rules expressed in terms of ‘propriety’ . . . place *ipse dixit* powers, antithetical to rule of law, in the hands of disciplinary boards and courts applying such rules.”).

¹³ Rule 2.2 also fails to apprise a person of ordinary intelligence which speech or conduct is forbidden. That Rule requires judges to “perform all duties of judicial office fairly.” W.C.J.C., R. 2.2. But “fairness,” like “appearance of impropriety,” is a subjective and imprecise concept, and its inclusion in Rule 2.2 illustrates that Rule’s vagueness.

ambiguous Rules serve only to expand the discretion and the power of the Commission to target judges who express views that contradict those of the Commission's officials. Those Rules are thus void for vagueness.

Overbreadth. Laws that punish constitutionally protected speech “must be narrowly drawn.” *Broadrick v. Oklahoma*, 413 U.S. 601, 611 (1973). When they are not and instead “prohibit[] a substantial amount of protected speech,” they will be invalidated under the “First Amendment overbreadth doctrine.” *United States v. Williams*, 553 U.S. 285, 292 (2008). Invalidating such regulations is necessary because their “very existence” has “a deterrent effect” on—and thereby inhibits—free expression. *City Council of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 798-99 (1984). Indeed, where laws “have an overbroad sweep, just as where they are vague, the hazard of loss or substantial impairment of [free-speech] rights may be critical, since [individuals] covered by [those regulations] are bound to limit their behavior to that which is unquestionably safe.” *Keyishian*, 385 U.S. at 609 (quotation marks and citation omitted).

As this proceeding demonstrates, the Commission believes that the Code authorizes it to remove judges for constitutionally protected speech that occurs off the bench about issues that do not pertain to their adjudicative duties. Under this broad understanding of the Commission's authority, judges throughout the state (not just Judge Neely) may be punished for engaging in protected expression on myriad topics and in various settings. The breadth of this asserted power to restrict speech is staggering.

Consider Rule 1.2. If the Commission ignores Judge Neely's argument that Rule 1.2 applies only to conduct and not to speech, *see supra* at 15, that Rule will be used to prohibit a substantial amount of protected expression. Comment 3 to the Rule all but admits that it is overbroad, stating that the Rule is “cast in general terms” to prohibit anything that “appears to compromise the independence, integrity, [or] impartiality of a judge.” W.C.J.C., R. 1.2 cmt. 3. In addition, Comment

1 notes that the Rule “applies to both the professional and personal” contexts, *id.* at cmt. 1; and Comment 5 emphasizes that the Rule prohibits “the appearance of impropriety,” which includes anything that “reflects adversely on the judge’s . . . impartiality, temperament, or fitness to serve as a judge,” *id.* at cmt. 5. All of this unbounded language threatens a wide range of protected speech. For example, under the Commission’s reading of the Rule, judges cannot criticize (or praise) their governments, even in personal settings, because doing so would appear to compromise their impartiality in cases where that government is a party. Similarly, judges cannot speak about the social ills resulting from, or their beliefs concerning the immorality of, alcoholism or drunkenness, even at a cultural or religious event, for fear of compromising their impartiality in cases where a defendant is accused of public intoxication. These examples merely scratch the surface of the vast amount of protected speech jeopardized by the Commission’s breathtakingly broad interpretation of Rule 1.2.

Also consider Rule 2.3, which explicitly bans speech. *See* W.C.J.C., R. 2.3(B) (“A judge shall not . . . *by words* . . . manifest bias or prejudice”) (emphasis added). If the Commission ignores Judge Neely’s argument that Rule 2.3 applies only to speech or conduct that occurs while judges are performing required judicial duties, particularly duties in the adjudicative context, *see supra* at 8-10, that Rule will be interpreted to forbid all expression that “manifest[s] bias or prejudice” in any context. And given its non-exclusive list of classifications, Rule 2.3 bans bias or prejudice of all kinds, even innocuous types like bias against baseball, loud talkers, restaurant owners, or Thai food. *See supra* at 24. It is no stretch to say that judges, like most people, manifest that kind of bias daily. Thus, the scope of protected speech forbidden under the Commission’s reading of this Rule is vast. Indeed, if the Code prohibits Judge Neely’s response to Mr. Donovan’s question, neither can a judge publicly say that years of performing her judicial duties have shown her that excessive wealth and greed often give rise to criminal activity, lest she manifest prejudice


based on “socioeconomic status.” *See* W.C.J.C., R. 2.3(B). Examples like these could easily be multiplied. Hence, Rule 2.3 is substantially overbroad.

Finally, the undeniable vagueness and overbreadth concerns with applying the Code as the Commission suggests reinforce Judge Neely’s arguments that she did not violate the Code in the first place. *See supra* at 8-18. Once the Commission opens Pandora’s box by applying Code provisions to remove judges for their religious speech outside of an adjudicative context, there is no denying that other judges will be at risk of discipline simply for engaging in speech that the Commission dislikes.

CONCLUSION

For the foregoing reasons, Judge Neely is entitled to summary judgment in her favor, and the Adjudicatory Panel should dismiss all charges in the Notice.

Dated: October 30, 2015



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**Out-of-State Certification Obtained*

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

An inquiry concerning)	
	)	COMMISSION ON JUDICIAL CONDUCT
The Honorable Ruth Neely	)	No. 2014-27 AND ETHICS
	)	Official Record
Municipal Court Judge and	)	FILED
Circuit Court Magistrate	)	Date: 10/30/15
Ninth Judicial District	)	<i>Wendy J. Soto</i>
Pinedale, Sublette County	)	Wendy J. Soto

**INDEX OF SUPPORTING MATERIALS FOR THE HONORABLE RUTH NEELY'S
MOTION FOR SUMMARY JUDGMENT**

VOL. I

Index of Supporting Materials
for the Honorable Ruth Neely's Motion for Summary Judgment

<u>Exhibit No.</u>	<u>Document Title</u>
	Affidavit of Kenneth J. Connelly
1	Pinedale Municipal Code, Chapter 23
2	Town of Pinedale, Wyoming, Municipal Court & Judge, Duties
3	Transcript of the Deposition of the Honorable Curt Haws
4	2008 Circuit Court Magistrate Appointment Letter for Judge Neely
5	Wyoming Statutes Section 5-9-212
6	Wyoming Statutes Section 20-1-106
7	Transcript of the Deposition of Wendy Soto
8	Transcript of the Deposition of Stephen Smith
9	Commission's Response to Judge Neely's Requests for Admission
10	Transcript of the Deposition of the Honorable Ruth Neely
11	Lutheran Church, Missouri Synod, News and Information— <i>Upholding Marriage: God's Plan and Gift</i>
12	<i>Guzzo v. Mead</i> , 2014 WL 5317797 (D. Wyo. Oct. 17, 2014)
13	<i>Guzzo v. Mead</i> , Docket No. 47, No. 2:14-cv-00200-SWS (D. Wyo. October 21, 2014)
14	1/17/15 Email from Judge Haws to Wendy Soto with Letter Attachment
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24	12/22/14 Email from Wendy Soto to Julie Tiedeken
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26	12/22/14 Email from Wendy Soto to Investigatory Panel Members
27	Transcript of the Investigatory Panel's 1/6/15 Teleconference
28	1/12/15 Letter from the Commission to Judge Haws and Judge Neely
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	Affidavit of Bob Jones
	Affidavit of Miriam Carlson
	Affidavit of Ralph E. Wood
	Affidavit of Sue Eversull
	Affidavit of Sharon Stevens
	Affidavit of Kathryn Anderson
	Affidavit of Reverend Kevin Rose
	Affidavit of Stephen Crane

CONNELLY AFFIDAVIT

**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)	

AFFIDAVIT OF KENNETH J. CONNELLY

COMES NOW Affiant Kenneth J. Connelly, and presents the following sworn testimony:

1. I submit this affidavit in support of the Honorable Ruth Neely's Motion for Summary Judgment. I am legal counsel for Judge Neely in this matter. I have personal knowledge of all matters asserted herein.
2. Exhibit 1 is a true and accurate copy of the Pinedale Municipal Code, Chapter 23, downloaded from <http://ecode360.com> on October 15, 2015.
3. Exhibit 2 is a true and accurate copy of the Town of Pinedale, Wyoming, Municipal Court & Judge, Duties, downloaded from <http://www.townofpinedale.us/135/Municipal-Court-Judge>.
4. Exhibit 3 is a true and accurate copy of the transcript of the Deposition of the Honorable Curt Haws, which I took during discovery in this case.
5. Exhibit 4 is a true and accurate copy of the 2008 Circuit Court Magistrate Appointment Letter for Judge Neely, which I obtained during discovery in this case from the Honorable Curt Haws in response to a subpoena that Judge Neely served on him.

6. Exhibit 5 is a true and accurate copy of the Wyoming Revised Statute § 5-9-212 obtained from Westlaw.
7. Exhibit 6 is a true and accurate copy of the Wyoming Revised Statute § 20-1-106 obtained from Westlaw.
8. Exhibit 7 is a true and accurate copy of the transcript of the Deposition of Wendy Soto, which was taken during discovery in this case and which I attended.
9. Exhibit 8 is a true and accurate copy of the transcript of the Deposition of Stephen Smith, which was taken during discovery in this case and which I attended.
10. Exhibit 9 is a true and accurate copy of the Commission's Response to Judge Neely's Requests for Admission, which the Commission's attorney sent to me during discovery in this case.
11. Exhibit 10 is a true and accurate copy of the transcript of the Deposition of the Honorable Ruth Neely, which was taken during discovery in this case and which I attended.
12. Exhibit 11 is a true and accurate copy of a document from the Lutheran Church, Missouri Synod that is entitled *News and Information—Upholding Marriage: God's Plan and Gift*, downloaded from <https://blogs.lcms.org/2013/upholding-marriage-gods-plan-and-gift> on October 16, 2015.
13. Exhibit 12 is a true and accurate copy of the decision in *Guzzo v. Mead*, 2014 WL 5317797 (D. Wyo. Oct. 17, 2014), obtained from Westlaw.
14. Exhibit 13 is a true and accurate copy of an Order Lifting Temporary Stay in the *Guzzo v. Mead* case dated October 21, 2014 obtained through the federal court's PACER (Public Access to Court Electronic Records) system.

15. Exhibit 14 is a true and accurate copy of the 1/17/15 Email from Judge Haws to Wendy Soto with Letter Attachment. The letter attached to that email is Judge Haws's letter to the Commission dated 1/17/15. The Commission's attorney sent these documents to me during discovery in this case.
16. Exhibit 15 is a true and accurate copy of the transcript of the Deposition of Ana Cuprill, which I took during discovery in this case.
17. Exhibit 16 is a true and accurate copy of the Commission's Supplemental Rule 11(b) Disclosures, which the Commission's attorney sent these documents to me during discovery in this case.
18. Exhibit 17 is a true and accurate copy of 12/11/14 Email from Judge Haws to Colleagues, which I was produced during discovery in this case by Judge Haws in response to a subpoena that Judge Neely served on him.
19. Exhibit 18 is a true and accurate copy of the Wyoming Democratic Party Platform, which was adopted on May 17, 2014, and is accessible at <http://www.wyodems.org/platform>.
20. Exhibit 19 is a true and accurate copy of the transcript of the Deposition of Jeran Artery, which I took during discovery in this case.
21. Exhibit 20 is a true and accurate copy of Wyoming Equality's Mission Statement, which I downloaded at <http://www.wyomingequality.org/about-us>.
22. Exhibit 21 is a true and accurate copy of an article by Gregory Nickerson entitled *Wyoming same-sex marriage case rests on state constitution* that was posted on WyoFile's website on April 8, 2014. I downloaded that article from <http://www.wyofile.com/wyoming-same-sex-marriage-case-rests-on-state-constitution>.

23. Exhibit 22 is a true and accurate copy of the Commission's Answers to Interrogatories produced by the Commission during discovery.
24. Exhibit 23 is a true and accurate copy of the 12/22/14 Email from Ana Cuprill to Wendy Soto attaching Sublette Examiner Article, which was produced by the Commission during discovery in this case.
25. Exhibit 24 is a true and accurate copy of the 12/22/14 Email from Wendy Soto to Julie Tiedeken, which was produced by the Commission during discovery in this case.
26. Exhibit 25 is a true and accurate copy of the transcript of the Deposition of Julie Tiedeken, the representative for the Commission on Judicial Conduct and Ethics (the "Commission") designated to testify pursuant to Wyoming Rule of Civil Procedure 30(b)(6). This deposition was taken during discovery in this case, and I attended it.
27. Exhibit 26 is a true and accurate copy of the 12/22/14 Email from Wendy Soto to the Investigatory Panel Members, which was produced by the Commission during discovery in this case.
28. Exhibit 27 is a true and accurate copy of the Transcript of the Investigatory Panel's 1/6/15 Teleconference. A court reporter transcribed that teleconference using the electronic recording of that teleconference that the Commission produced during discovery in this case.
29. Exhibit 28 is a true and accurate copy of the 1/12/15 Letter from the Commission to Judge Haws and Judge Neely, which was produced by the Commission during discovery in this case.
30. Exhibit 29 is a true and accurate copy of the Transcript of the Investigatory Panel's 2/18/15 Teleconference. A court reporter transcribed that teleconference using the electronic recording of that teleconference that the Commission produced during discovery in this case.

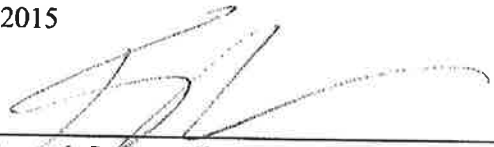
31. Exhibit 30 is a true and accurate copy of a printout entitled "Wyoming Lawyers for Marriage." I downloaded that printout from <http://www.wyomingunites.org/lawyersformarriage>.
32. Exhibit 31 is a true and accurate copy of the 3/2/15 Letter from Investigatory Panel Acting Presiding Officer Karen Hayes to Commission Chair Kerstin Connolly, which was produced by the Commission during discovery in this case.
33. Exhibit 32 is a true and accurate copy of the Notes of Wendy Soto, which were produced by the Commission during discovery in this case.
34. Exhibit 33 is a true and accurate copy of the 3/3/15 Email from Kurt Twitty to Wendy Soto, which was produced by the Commission during discovery in this case.
35. Exhibit 34 is a true and accurate copy of the Notice of Commencement of Formal Proceedings that the Commission filed against Judge Neely in this case.
36. Exhibit 35 is a true and accurate copy of the Verified Answer to the Commission's Notice filed by Judge Neely in this case.
37. Exhibit 36 is a true and accurate copy of the Amended Notice of Commencement of Formal Proceedings that the Commission filed against Judge Neely in this case.
38. Exhibit 37 is a true and accurate copy of Judge Neely's Motion to Dismiss the New Claims in the Amended Notice of Commencement of Formal Proceedings, which Judge Neely filed in this proceeding.
39. Exhibit 38 is a true and accurate copy of the Notice of Confession of Motion to Dismiss filed by the Commission in this case.
40. Exhibit 39 is a true and accurate copy of the Order Dismissing Amended Claims entered by the Presiding Hearing Officer in this case.

41. Exhibit 40 is a true and accurate copy of the Verified Amended Answer to the Commission's Notice filed by Judge Neely in this case.

42. Exhibit 41 is a true and accurate copy of a document that the United Church of Christ released on 7/4/2015 entitled *Equal Marriage Rights for All*. I downloaded that document from the United Church of Christ's website, from a link available at this webpage [http://www.ucc.org/lgbt_issues_marriage-equality_index#Marriage Equality and the UCC](http://www.ucc.org/lgbt_issues_marriage-equality_index#Marriage_Equality_and_the_UCC).

FURTHER YOUR AFFIANT SAYETH NAUGHT.

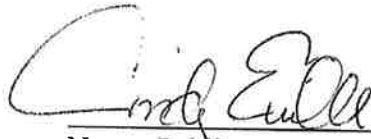
Dated this 30 day of October, 2015



Kenneth J. Connelly

STATE OF ARIZONA)
)SS
COUNTY OF MARICOPA)

SUBSCRIBED AND SWORN before me this 30 day of October, 2015, by Kenneth J. Connelly.



Notary Public

My commission expires: 5/14



EXHIBIT 1

Chapter 23. Court, Municipal

[HISTORY: Adopted by the Town Council of the Town of Pinedale 1983 by Ord. No. 115 (Ch. 2.16 of the 1983 Municipal Code). Amendments noted where applicable.]

GENERAL REFERENCES

General penalty — See Ch. 1, Art. IV.

§ 23-1. Municipal Judge; appointment; dismissal; alternates.

[Amended 1984 by Ord. No. 163; 1993 by Ord. No. 230]

- A. The office of Municipal Judge is created in and for the Town. The Municipal Judge shall have jurisdiction to hear, try and determine all cases arising under the ordinances of the Town and shall conduct trials and hearings, enter judgments, sentence, fine and imprison as provided by law. Practice before the Municipal Court shall be governed by the Wyoming Rules of Criminal Procedure, and such other rules of procedure as the Town may establish.
- B. The office of Alternate Municipal Judge is created in and for the Town. The Alternate Municipal Judge shall have the same jurisdiction as the Municipal Judge and shall hear, try and determine all cases when the Municipal Judge has recused or been disqualified, when the Municipal Judge is unavailable or suffering from a disability, or whenever assigned to preside by the Municipal Judge.
- C. The Municipal Judge, as well as any Alternate Judge, shall be appointed by the Mayor, with concurrence of a majority of the Town Council. Any Municipal Judge or alternate may be dismissed for cause by the Mayor, with concurrence of a majority of the Town Council.
- D. The Municipal Judge and Alternate Judges shall be qualified electors of the state.
- E. The Municipal Judge and Alternate Municipal Judges shall be entitled to such compensation as provided by the ordinances of the Town.

§ 23-2. Judge; oath or affirmation; bond.

Before entering upon the discharge of the duties of the office, each Municipal Judge will subscribe an oath or affirmation to honestly and faithfully perform and discharge the duties of such office and shall, in addition, give bond to the Town in the sum of \$1,000.

§ 23-3. Punishment of violators.

[Amended 8-23-2010 by Ord. No. 461]

Any person convicted before the Municipal Judge shall be punished by such fine as may be defined by ordinance; provided that no fine shall be greater than \$750, to which may be added court costs. Imprisonment may be imposed if it is specifically authorized in a particular ordinance. The Municipal Judge

shall have the same power to punish for contempt as a Circuit Court Judge. The Municipal Judge shall have the discretion to permit those persons convicted to perform work and services for the Town to be applied in payment of fine and imprisonment.^[1]

[1] *Editor's Note: Original Sec. 2.16.040, which previously followed this section, was repealed in 1993 by Ord. No. 228.*

§ 23-4. Appeals.

An appeal from the judgment or sentence of the Municipal Court shall be taken to the District Court in and for the county in the same manner as now provided by the law governing appeal from the Justice of the Peace Courts in all cases.

§ 23-5. Disposition of fines and penalties.

All fines and penalties collected, arising out of any breach of any provision of the ordinances of the Town, shall, on a monthly basis, be paid into the Town treasury by the Municipal Judge collecting the same.

§ 23-6. Monthly report.

[Amended 8-23-2010 by Ord. No. 461; 12-10-2012 by Ord. No. 493]

Such Municipal Judge shall present a monthly report to the Town Council at a regular meeting thereof of all cases that may have come before him, the disposition of the same and all fines collected during the preceding month.

§ 23-7. Attestation of Town officers.

Upon appointment to the position of Municipal Judge, Town Clerk-Treasurer or police officer, such officer shall also be empowered to attest to statements and sworn affidavits as may be required in the performance of their duties.

§ 23-8. Failure to appear.

[Added 1984 by Ord. No. 136]

- A. Any person charged with violating any provisions of the Pinedale Municipal Code, who fails to appear in Municipal Court as scheduled, after:
- (1) Signing a written promise to appear on the date scheduled; or
 - (2) Executing an appearance bond guaranteeing a court appearance on the date indicated; or
 - (3) Requesting and obtaining from the Court a continuance to another date; or
 - (4) Being served (personally or by certified mail) with a summons to appear; or
 - (5) Having been ordered to appear in Municipal Court;
- B. Is guilty of a misdemeanor, and upon conviction shall be subject to the general penalty provision of Chapter 1, Article IV, General Penalty, which may be added to any other penalties prescribed for violations of the Pinedale Municipal Code.^[1]

[1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).*

EXHIBIT 2

Municipal Court & Judge

Duties

Pinedale Municipal Court processes all citations for violations of the ordinances of the Town of Pinedale. Common citations include those having to do with traffic, fighting,, public intoxication, animal control, and parking. Jurisdiction for municipal court is for offenses that occur only within the town limits of Pinedale, with the exception of the issuance of bench warrants for which the court has statewide jurisdiction.

Schedule

Arraignment for all citations:

- Mondays at 10 a.m.
- Hearings and trials on Thursdays as scheduled

All court appearances are in the courtroom of the Pinedale Town Hall at 210 West Pine Street and are open to the public.

Procedure

If the box on your citation labeled "Must Appear" is checked, you are required to appear in court on the date and time indicated. If the box labeled "May forfeit bond in lieu of appearance" is checked, you may either appear in court on the date indicated or post the bond amount designated on the citation by that date.

Payment

You may submit your payment in person or by mail. Personal checks are accepted from Wyoming residents if drawn on a Wyoming bank. All other payments must be by cash, cashier's check, or money order. The court does not accept credit / debit cards. Do not mail cash. Wyoming is a member of the Nonresident Violator's Compact. If your licensing state is a member of the compact and you fail to appear in court or post bond for a violation of a traffic offense, your driver's license may be suspended.

Parking Tickets

Follow the instructions on the bottom and back of your citation. The same payment methods apply as noted above.

CONTACT US

Ruth Neely

Municipal Court Judge

judge@townofpinedale.us

P.O. Box 1386

Pinedale, WY 82941

Office Ph: 307-367-4136

Home Ph: 307-367-2742

Cell Ph: 307-360-7009

Hours

Mondays and Thursdays

Other days available by appointment

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EXHIBIT 3

1 BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS

2 STATE OF WYOMING

3

4

5	An inquiry concerning	)	Commission on Judicial
6		)	Conduct and Ethics
7	The Honorable Ruth Neely	)	No. 2014-27
8	Municipal Court Judge and)	
9	Circuit Court Magistrate)	
	Ninth Judicial District)	
	Pinedale, Sublette County)	

10

11

12

13

DEPOSITION OF

14

THE HONORABLE CURT AUSTIN HAWS
Friday, September 18, 2015

15

16

17

TAKEN AT

Sublette County Library Board Room
Pinedale, Wyoming

18

19

20

21

22

23

COURT REPORTER:
Michelle L. Cunningham
Deputy and Freelance Reporter
Notary Public

24

25

Jackson Hole Court Reporting Service (307) 733-2637

2
APPEARANCES:

3
FOR COMMISSION ON JUDICIAL CONDUCT AND ETHICS:

4 DIXON & DIXON, LLP
5 BY: Patrick Dixon, Attorney at Law
6 Suite 600, First Interstate Bank Building
7 104 South Wolcott
8 Casper, Wyoming 82601
9 (307) 234-7321
10 E-mail: pdixon@dixonanddixonllp.com

10
FOR THE HONORABLE RUTH NEELY:

11 ALLIANCE DEFENDING FREEDOM
12 BY: Kenneth J. Connelly, Attorney at Law
13 and Douglas Wardlow, Attorney at Law
14 and Jim Campbell, Attorney at Law
15 15100 North 90th Street
16 Scottsdale, Arizona 85260
17 (480) 444-0200
18 E-mail: kconnelly@adflegal.org

16
ALSO PRESENT:

17 Wendy Soto

25 Jackson Hole Court Reporting Service (307) 733-2637

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INDEX OF EXHIBITS

Exhibit	Description	Reference
37	Subpoena Duces Tecum for Judge Haws	Page 9
38	Order Appointing Adjunct Court Magistrate	Page 43
39	E-mail from Judge Haws to Justice Burke	Page 98
40	E-mail from Judge Haws to Judge Castor and Judge Roberts	Page 99
41	Letter from Judge Neely to the Judicial Ethics Advisory Committee	Page 103
42	Order Appointing Adjunct Court Magistrate dated 6/04/2007	Page 123

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INDEX OF EXAMINATION

EXAMINATION BY:	Page:
Mr. Connelly	5
Mr. Dixon	123

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1
2 **BE IT REMEMBERED** that, pursuant to
3 Notice of Deposition, and on Friday,
4 September 18, 2015, commencing at the hour
5 of 9:03 a.m., thereof, at the Sublette
6 County Library Board Room, Pinedale,
7 Wyoming, before me, MICHELLE L. CUNNINGHAM,
8 a Freelance Shorthand Reporter and Notary
9 Public in and for the County of Sublette,
10 State of Wyoming, there personally appeared
11 THE HONORABLE CURT AUSTIN HAWS,
12 called as a witness by the Defendant, and
13 who, being first duly sworn, was thereupon
14 examined and testified as hereinafter set
15 forth.

15
16 **EXAMINATION OF THE HONORABLE CURT AUSTIN HAWS
BY MR. CONNELLY**

17 Q. Good morning, Judge Haws. My name's Ken
18 Connelly, and I'm legal counsel with Alliance
19 Defending Freedom. We're counsel for
20 Judge Neely.

21 A. Good morning.

22 Q. I want to thank you, first, for making
23 yourself available for this deposition.

24 Would you please state and spell your full
25 legal name for the court reporter?

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6

1 A. Curt, C-U-R-T, Austin, A-U-S-T-I-N,
 2 Haws, H-A-W-S.
 3 Q. Okay. Have you been deposed before?
 4 A. I have.
 5 Q. Okay.
 6 And for what purpose?
 7 A. I'm trying to remember the universe.
 8 The only one I can recall is a suit
 9 against my old firm in Los Angeles where I
 10 had worked on the case and was deposed.
 11 Q. Okay. Were you a party to the lawsuit,
 12 then, or --
 13 A. No.
 14 Q. How'd that suit turn out?
 15 A. My firm got tagged.
 16 Q. Was there any other depositions, do you
 17 remember, where you had to sit for a
 18 deposition?
 19 A. No.
 20 Q. Okay.
 21 Have you taken a deposition before?
 22 A. Many.
 23 Q. I know as a judge and a former
 24 practitioner you're more than familiar with
 25 the deposition process, but I'll just run
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1 affect your ability to testify?
 2 A. No.
 3 Q. Are you sick at all today?
 4 A. No.
 5 Q. Have you ever been a party to a lawsuit?
 6 A. I have.
 7 Q. Okay. And what was that?
 8 A. I was sued by an inmate for depriving
 9 him of his Constitutional rights.
 10 Q. Okay. How did that turn out?
 11 A. That was dismissed.
 12 Q. That was while you were circuit court
 13 judge?
 14 A. That's while I was circuit court judge,
 15 correct.
 16 Q. Was that a habeas corpus proceeding or...
 17 A. I can't remember the nature. I think
 18 he just didn't like the bond I set. It was
 19 kind of a bizarre one-off.
 20 Q. Any other lawsuits that you've been a
 21 party to?
 22 A. No.
 23 Q. Have you testified in court?
 24 A. I have.
 25 Q. Okay. And what did that involve?
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1 through a few ground rules just to remind you
 2 and remind myself as well.
 3 As you know, the court reporter will
 4 record my questions and your answers, so
 5 please answer verbally and avoid gestures.
 6 If ever I ask a question that's unclear,
 7 if you would please just ask me to clarify
 8 it, and I'll be happy to do so.
 9 If you need a break, just let me know and
 10 as soon as I'm done with the line of
 11 questioning, we'll take a break. We'll plan
 12 on taking regular breaks anyway.
 13 And if you give me an answer and later
 14 think of something that you'd like to change
 15 about that answer for something you omitted,
 16 please let me know, and we can arrange for
 17 that.
 18 Are you represented by counsel today?
 19 A. I am not.
 20 Q. Okay.
 21 Is there any reason why you can't provide
 22 your best and most accurate testimony today?
 23 A. No.
 24 Q. Are you currently taking any medications,
 25 drugs, or any other substances that can
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1 A. The -- that was the -- the malpractice
 2 case against my old firm.
 3 Q. Okay.
 4 And, finally, do you understand you're
 5 under oath today?
 6 A. I do.
 7 Q. And that -- you probably know this
 8 already, but you understand these proceedings
 9 are confidential?
 10 A. I do.
 11 Q. You can't reveal the name of Judge Neely
 12 or the subject matter -- of the proceeding.
 13 A. Correct.
 14 **(Whereupon, Deposition Exhibit 37 was**
 15 **marked for identification.)**
 16 Q. (By Mr. Connelly) Okay. I'm handing you
 17 what's previously been marked Deposition
 18 Exhibit 37.
 19 A. Thank you.
 20 Q. I'll just give you a couple seconds to go
 21 ahead and review that, if you would.
 22 A. (Reviewing document.)
 23 All right.
 24 Q. Do you recognize that document, Judge?
 25 A. I recognize all but the last two pages.
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10

1 Q. And what are the first five pages?
 2 A. Those are -- that's the subpoena that
 3 was served on me in this matter.
 4 Q. And you're here today in response to that
 5 subpoena; correct?
 6 A. I am.
 7 Q. Have you provided documents in response to
 8 that subpoena?
 9 A. I've provided them to Mr. Dixon, yes.
 10 Q. Did you provide all the documents that you
 11 believe are responsive to the subpoena?
 12 A. The only document that's not been
 13 provided is the one that was referenced in
 14 the cover letter to Mr. Dixon, which was
 15 the letter that I had sent to the
 16 Commission, which I subsequently located
 17 on -- I couldn't remember which laptop I'd
 18 written it on, but I found it. And if you
 19 don't have a copy, I do have a copy of that
 20 for you.
 21 Q. What documents did you review in
 22 preparation for this deposition?
 23 A. I reviewed the January 16, 2015, letter
 24 that I sent to the Commission.
 25 Q. Okay.

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1 Has anyone shown you any of the
 2 pleadings in this matter?
 3 A. No.
 4 Q. I'd just like to start with a little
 5 background information, if you could, Judge.
 6 A. Sure.
 7 Q. Where were you born?
 8 A. I was born in Provo, Utah, 1959.
 9 Q. And where did you grow up?
 10 A. I grew up in Star Valley, Wyoming.
 11 Q. And if you could just briefly, from high
 12 school on, say, just outline your education
 13 for me.
 14 A. Sure. Out of -- out of high school, I
 15 attended Brigham Young University for a
 16 year, then took a two-year hiatus to serve
 17 a mission for my church in Taiwan.
 18 Returned, completed my undergraduate
 19 degree in international relations and Asian
 20 studies at Brigham Young, and then law
 21 school at Brigham Young University as well.
 22 Q. Okay. Where do you live now?
 23 A. I -- I have two homes. One here in --
 24 in lovely Pinedale and -- and one in
 25 Jackson. My family resides full-time in

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1 Jackson. I reside part-time in both
 2 places.
 3 Q. Okay.
 4 You commute here, then, for court work?
 5 A. Correct.
 6 Q. You mentioned your -- the -- the mission
 7 trip you did for two years.
 8 A. Yes.
 9 Q. So do you still profess or practice a
 10 particular religion?
 11 A. I do. I'm a member of The Church of
 12 Jesus Christ of Latter-Day Saints --
 13 Q. Okay.
 14 A. -- commonly known as the Mormon Church.
 15 Q. And do you attend church regularly?
 16 A. I do.
 17 Q. Okay.
 18 Talk to me a little bit about community
 19 involvement outside court work. Do you
 20 belong to any fraternal organizations,
 21 charitable organizations?
 22 A. I -- as -- as you probably know, mine
 23 is a very limiting job, and so I'm
 24 precluded from a lot of activities that I
 25 would otherwise enjoy. I -- locally here,

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13

1 I sit on the board for the Pinedale
 2 Community Theater.
 3 Q. Okay.
 4 A. I'm actively involved in a number of
 5 arts organizations in Jackson, and I'd say
 6 that's probably where my social life exists
 7 to a greater extent, because there's less
 8 risk of conflicts.
 9 Q. How about before you became a judge? Did
 10 you have any...
 11 A. Sure. I sat on the local boards for
 12 the Boy Scouts.
 13 Q. Okay.
 14 A. Sat on a number of -- of boards,
 15 business boards.
 16 Q. Do you recall the names of those?
 17 A. The -- the business boards that I've
 18 sat on are -- are family corporations.
 19 Q. Okay.
 20 A. We have a number of family corporations
 21 that operate lodging and development
 22 properties in Jackson.
 23 Q. What are the names of those?
 24 A. That would be Elk Country Motels, Old
 25 West Corporation, CVB Partners. Those are

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1 the three that I -- I think I sat on.
 2 Q. Okay.
 3 You said you went to BYU --
 4 A. Correct.
 5 Q. -- law school --
 6 A. Correct.
 7 Q. -- after undergrad?
 8 Did you have any time in between those?
 9 Did you work in between law school and
 10 college, or did you go straight out of
 11 college to law school?
 12 A. Went straight out of college to law
 13 school.
 14 Q. And if you could just outline from the
 15 time, you graduated law school at BYU up
 16 through now --
 17 A. Sure.
 18 Q. -- just a brief, sort of, outline as your
 19 work history as a lawyer?
 20 A. Sure. Right out of law school,
 21 Charisse and I -- who's also -- my wife is
 22 also an attorney, we both were recruited
 23 and joined Jones, Day, Reavis, and Pogue in
 24 their Los Angeles office and worked at
 25 Jones Day for a couple of years.

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1 We then relocated to Park City, Utah.
 2 I worked there for Ray, Quinney, and
 3 Nebeker. Charisse worked for Holme,
 4 Roberts, and Owen.
 5 After three or four years, I think,
 6 we -- we came home and worked -- I worked
 7 for Mullikin, Larson, and Swift in Jackson.
 8 So did Charisse, eventually, after I had
 9 left.
 10 Then for about ten years, I went
 11 in-house with the family corporations.
 12 The end of that time, I relocated to
 13 Beijing and attended Tsing Hua University
 14 and received an LLM in Chinese law.
 15 Came back to Wyoming to get the wife
 16 and kiddos, and we planned to relocate
 17 overseas. This opportunity came up, and so
 18 I'm using my Chinese degree a ton right
 19 here in Pinedale on a daily basis.
 20 Q. Have you ever -- before you became a
 21 circuit court judge, did you ever have any
 22 other government positions as a -- as a judge
 23 or...
 24 A. I served as a -- as a district court
 25 commissioner for Judge Rogers in Jackson.

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1 I also served as a circuit court magistrate
 2 for Judge Day in Jackson.
 3 Q. What -- did you serve on those
 4 simultaneously?
 5 A. Um-hum.
 6 Q. Okay. Let's take those each in turn, if
 7 you could.
 8 A. Sure.
 9 Q. What is a district court commissioner?
 10 Can you explain that to me?
 11 A. District court commissioner is a person
 12 empowered to act if the judge is out of --
 13 out of the county and unavailable. That
 14 typically took the form of emergency
 15 hearings, in-custody, and support hearings
 16 and domestic relations cases; the habeas
 17 corpus proceedings; Title 25, which is our
 18 shorthand for involuntary hospitalization
 19 proceedings. So things that were on an
 20 expedited docket, if you will. If the
 21 judge was unavailable, I would do -- do
 22 those. Did a lot of Title 25; that seemed
 23 to be where the need was.
 24 Q. And you said customarily those were the
 25 things you did.

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17

1 A. Um-hum.
 2 Q. Does the law authorize the district court
 3 commissioner to do a broader range of things?
 4 A. It allows a commissioner to do anything
 5 that a judge could do in chambers. So if
 6 the judge were on an extended vacation, for
 7 example, it would -- it would not be
 8 uncommon to review uncontested pleadings,
 9 sign orders where there wasn't a hearing
 10 needed kind of a thing.
 11 Q. So even though you customarily did two or
 12 three things --
 13 A. Right.
 14 Q. -- in general, you were empowered by state
 15 law to do more?
 16 A. Correct.
 17 Q. Okay.
 18 If you could talk about -- and when --
 19 what was the time frame of that; do you
 20 remember?
 21 A. That would have been mid '90s through
 22 2000, probably. Somewhere in that
 23 neighborhood. Maybe a little longer.
 24 Q. How does that appointment process work?
 25 A. It -- the judge makes the appointment.

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1 Q. Okay.
 2 A. You serve at the pleasure of the judge.
 3 Q. So it's of indefinite duration, until the
 4 judge decides he doesn't need you anymore?
 5 A. Right. Correct. That's my
 6 understanding.

7 Q. Can you talk about the circuit court
 8 magistrate position?
 9 A. Right. That's very different.
 10 That was literally "put the robe on and sit
 11 in the judge's chair" if he was
 12 unavailable.

13 And so that did not happen a lot and
 14 would usually take the form of -- it would
 15 be common to sit in for arraignments,
 16 change-of-plea hearings, those kinds of
 17 things, just to keep the docket moving,
 18 because the circuit court docket has a much
 19 brisker pace than the district court docket
 20 does.

21 But also do -- did a lot of search
 22 warrants in both those capacities;
 23 typically as the circuit court magistrate.
 24 But there are some types of warrants that
 25 only can be issued by the district court,

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1 such as a no-knock warrant --
 2 Q. Um-hum.
 3 A. -- or something like that.
 4 So wearing both hats ensured that --
 5 that the -- the proper authority was
 6 brought to bear on whatever warrant was
 7 involved.
 8 Q. And what type of magistrate were you? Are
 9 there different types? Were you a full-time
 10 magistrate? A part-time magistrate?

11 A. A part-time.
 12 Q. Okay.
 13 A. Yeah, there are two -- there are six
 14 full-time magistrates in the state of
 15 Wyoming. All other magistrates are
 16 part-time.

17 Q. And at part-time --
 18 MR. DIXON: I'm sorry. There's how
 19 many?

20 THE WITNESS: Six.
 21 Q. (By Mr. Connelly) And as a part-time
 22 magistrate, then, you would still have the
 23 full array of powers, though --

24 A. Correct.
 25 Q. -- is that correct?

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1 A. Correct.
 2 Q. Okay.
 3 Did you perform marriages as either a
 4 district court commissioner or a circuit
 5 court magistrate?

6 A. Excellent question.
 7 I'm trying to get the sequence right in
 8 my head, because I -- I have done
 9 marriages. Before I took the circuit court
 10 bench, I'd done two or three. And,
 11 honestly, I don't know whether I was acting
 12 as a commissioner or a magistrate, but one
 13 of those two.

14 Q. But in either position, you had the
 15 authority to --

16 A. Yes.
 17 Q. -- perform -- the authority to perform
 18 marriages?

19 A. Correct. Yes.
 20 Q. Okay.

21 So do you remember how many? Best guess.
 22 A. I can remember two in -- in particular.
 23 There may have been -- have been more, but
 24 not a lot.

25 Q. I want to talk a little bit about your
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1 current position. Just for the record, what
 2 is your current position officially?
 3 A. I'm a circuit court judge in the Ninth
 4 Judicial District Court of Wyoming seated
 5 in Sublette County.

6 Q. So what would be the jurisdiction of your
 7 court?

8 A. It's -- it's a state -- circuit court
 9 judges have statewide jurisdiction, but the
 10 Ninth Judicial District comprises Sublette
 11 County, Teton County, and Fremont County,
 12 so three counties. And there are four
 13 judges that serve those three counties.

14 Q. When you say "four judges," does that
 15 mean -- do they all sit in Pinedale?

16 A. No.
 17 Q. Where do they sit?

18 A. One -- nobody's in the same county. So
 19 I sit here in Pinedale, Judge Radda sits in
 20 Jackson, Judge Roberts sits in Riverton,
 21 and Judge Denhardt sits in Lander.

22 Q. Okay. And when were you appointed?
 23 A. Another great question.

24 I think I -- I think I got the
 25 appointment the end of 2005, took the job

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1 January 2, 2006.
 2 **Q.** And who -- who appoints -- who appoints
 3 circuit court judges?
 4 **A.** The governor.
 5 **Q.** And what is that process? If you could
 6 give me a run down outline of the process.
 7 How does it work?
 8 **A.** Let me tell you about the best process
 9 in the United States. We have a
 10 modified-Missouri process here, where if
 11 there's a vacancy on the bench, anyone can
 12 submit an expression of interest to fill
 13 that vacancy.
 14 Those expressions of interest are
 15 reviewed by the Judicial Nominating
 16 Commission, which is a commission comprised
 17 of three lawyers appointed by the bar,
 18 three laypersons appointed by the governor,
 19 chaired by the chief justice. They sift
 20 through the expressions of interest, select
 21 those that they would like to interview.
 22 They interview those folks. From those
 23 that are interviewed, they select three
 24 names and send those three names to the
 25 governor.

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1 The governor then interviews the final
 2 three applicants and makes his selection.
 3 **Q.** There's just one interview then?
 4 **A.** Well, there's two interviews: One with
 5 the Commission -- or the Nominating
 6 Commission and one with the governor.
 7 **Q.** Just one with the governor?
 8 **A.** Yeah, unless you're really -- I've only
 9 ever seen one.
 10 **Q.** Unless you need to redo it?
 11 **A.** Exactly.
 12 **Q.** After you're appointed, do you stand for
 13 reelection?
 14 **A.** Correct.
 15 **Q.** How does that work?
 16 **A.** Every -- every -- yes, you stand for
 17 retention, so no one's running against you,
 18 but the voters have the opportunity to kick
 19 you to the curb if you're not doing a good
 20 job. And that's why I think it's a great
 21 system. It's a merit-based appointment,
 22 but with citizen control if you've got
 23 somebody who's not doing the right job.
 24 **Q.** And what are the terms?
 25 **A.** Circuit court judges are every four

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1 years -- no. Yes, every four years. And I
 2 believe district and supreme are six, but
 3 I'm not sure.
 4 **Q.** So as a circuit court judge, if you come
 5 in in 2006, as 2010 approaches and you have
 6 this retention election, even though you're
 7 not running against somebody, what does that
 8 look like? Do you lawn signs?
 9 **A.** No.
 10 **Q.** Is it a -- is it a partisan -- I know
 11 you're not running against somebody, but do
 12 you have issue platforms that you'll run on?
 13 **A.** No.
 14 **Q.** Okay.
 15 **A.** In fact -- in fact, unless you have
 16 active opposition against you, you're
 17 precluded from campaigning.
 18 **Q.** Okay.
 19 **A.** So it's -- I -- I've never -- never
 20 bought a bumper sticker, never -- never
 21 campaigned, if you will, for this position.
 22 Let me clarify one thing. When you're
 23 first appointed, you are -- your first
 24 retention vote is the next general
 25 election. So -- so there's -- if there's a

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1 mistake made, there's an immediate chance
 2 to rectify that at the next general
 3 election. And from that point forward,
 4 it's every four years.
 5 **Q.** So you said if -- "if you're not opposed,"
 6 how can you -- how could somebody oppose a
 7 circuit court judge?
 8 **A.** That's -- well, it's -- it -- it
 9 happens infrequently but usually takes the
 10 form of letters to the editor. You start
 11 to see lawn signs. If -- and that's --
 12 that's a -- a question as to what
 13 constitutes active or organized opposition
 14 so that you can respond.
 15 The one case that I can think of,
 16 whether it was an active opposition, was
 17 there was a district court judge that had a
 18 group of lawyers and disgruntled litigants
 19 come together, raise money, buy ads in the
 20 newspaper, flyers, lawn signs, those kind
 21 of things.
 22 **Q.** And -- but in that case, there's still no
 23 candidate running against you, they're just
 24 mounting an opposition?
 25 **A.** To -- get you out of office.

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1 Q. And does that trigger, then, under the
 2 law, an opportunity for you to respond?
 3 A. Yes.
 4 Q. Okay. And what is that -- what are the
 5 parameters of your ability to respond?
 6 A. I'm happy to tell you I don't know.
 7 I -- it's -- it's -- I know that -- I
 8 know there are provisions in the Code of
 9 Judicial Conduct. I've not had occasion to
 10 look at those, and I'm happy to report
 11 that.
 12 Q. So you haven't had any oppositions mounted
 13 against you?
 14 A. No.
 15 Q. And how many retention elections have
 16 you --
 17 A. I'm coming into my third.
 18 Q. Okay.
 19 If there's no active opposition and you're
 20 not doing active campaigning, and it's
 21 nonpartisan, how do the voters know what --
 22 is it just simply a lack of opposition or are
 23 there some guides out there?
 24 A. Yeah, there's a -- there's a lawyer
 25 survey that's done by the University of
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1 Wyoming where the lawyers are asked to
 2 comment on judges and give judges ratings.
 3 That's published in advance of any general
 4 election. So that's -- so I'm not sure how
 5 many people actually know that source
 6 exists or -- or utilize it.
 7 The League of Women Voters will often
 8 send out a questionnaire to ask what your
 9 thoughts are on various topics. I have --
 10 I've never answered one of those because I
 11 just -- I'm -- that's such a -- so close to
 12 the line, and I'm a "stay away from the
 13 line" guy.
 14 Q. Do you know other circuit judges who have
 15 answered those?
 16 A. Sure. Sure.
 17 Q. So would you say -- is it fair to say it's
 18 common?
 19 A. No. I think it would be a minority of
 20 judges that respond to those. I think the
 21 majority that I've visited with feel like
 22 that's a little too close to campaigning.
 23 Q. Okay. But you do know some circuit court
 24 judges who have answered those?
 25 A. Yes.
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1 Q. And in your experience, have they been
 2 retained?
 3 A. Yes.
 4 Q. And did they suffer any discipline for
 5 those --
 6 A. No -- not --
 7 Q. -- those comments?
 8 A. -- not that I'm aware of. I probably
 9 wouldn't know if that happened.
 10 Q. As circuit court judges, are there
 11 supervisors that you report to? How does
 12 the -- the tree of authority work?
 13 A. A direct line to the chief justice of
 14 the Supreme Court.
 15 Q. Okay.
 16 A. So the Supreme Court has super very --
 17 very watch us and -- and they have the
 18 statutory authority to manage the affairs
 19 of the circuit courts. So we're a
 20 statutory court as opposed to a
 21 constitutional court. Where, like, the
 22 district courts, there's less direct
 23 supervision. So we interact frequently
 24 with -- with the Supreme Court and the
 25 Supreme Court administrator.
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1 Q. How about you in your capacity as a
 2 district court judge; who do you supervise?
 3 A. As a circuit court judge, I supervise
 4 my staff: My chief clerk and deputy
 5 clerks. I also am responsible for
 6 appointing and, I suppose, supervising any
 7 magistrates that I appoint.
 8 Q. Okay.
 9 You said you had a chief -- one chief
 10 clerk. And then how many deputy clerks do
 11 you have?
 12 A. I have one chief, and I have two and a
 13 half --
 14 Q. Okay.
 15 A. -- one half-time deputy.
 16 Q. And what do they do?
 17 A. They -- they make my life easy.
 18 They're responsible for all of the
 19 paperwork, which is massive. They're
 20 responsible for collecting and accounting
 21 for the funds. Circuit courts of Wyoming
 22 handle about \$13 million a year in fines
 23 and -- and receipts and they're responsible
 24 for making sure that's all done properly.
 25 They -- they -- they man the front counter,
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1 obviously, deal with litigants and -- and
 2 citizens that have questions and need
 3 information.
 4 **Q.** Do you have law clerks as well?
 5 **A.** No. No.
 6 **Q.** Let's talk a little bit about magistrates.
 7 You spoke about them; that you appoint them.
 8 **A.** Yes.
 9 **Q.** How many have you appointed? Can you tell
 10 me that?
 11 **A.** I can't -- I can't give you an accurate
 12 number. I have -- I have relatively few
 13 magistrates compared with other courts. We
 14 have a very small bar here. So I think at
 15 present, four, maybe five. I'm thinking
 16 four off the top of my head. I can't think
 17 of -- it seems like there is another -- but
 18 I will make special appointments if
 19 requested. For -- if -- if your niece is
 20 coming to down and she really wants her
 21 uncle to marry her and I'm confident the
 22 uncle is an upstanding citizen that won't
 23 bring ill repute to the judiciary, I'll --
 24 I'll gladly give Uncle a one-day
 25 magisterial position so he can perform that
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1 wedding for his niece.
 2 **Q.** And if you did do that, is that -- would
 3 that be noted on the -- will there be an
 4 appointment --
 5 **A.** Correct.
 6 **Q.** -- a formal appointment form?
 7 **A.** Correct.
 8 **Q.** Okay.
 9 **A.** It will be an order that I sign and an
 10 oath that that magistrate would sign.
 11 **Q.** Okay.
 12 So if you do limit the appointment to a
 13 certain power or a certain duration, that
 14 will be noted on the --
 15 **A.** Correct.
 16 **Q.** -- form?
 17 We talked a little bit about full-time
 18 and part-time.
 19 **A.** Right.
 20 **Q.** You said there were about four -- or six
 21 full-time.
 22 **A.** Six full-time.
 23 **Q.** Do the circuit court judges also appoint
 24 the full-time --
 25 **A.** No.
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1 **Q.** -- magistrates?
 2 **A.** No, that -- that appointment -- those
 3 magistrates are only in counties where
 4 there's not a full-time circuit court judge
 5 sitting. So in -- in pop- -- counties that
 6 have less legal services needed, less --
 7 less population, there won't be a full-time
 8 circuit court judge sitting, so the -- the
 9 -- you know, and I'm not sure whether that
 10 appointment's made by the chief justice or
 11 whether that goes to the Nominating
 12 Commission. I think that's done by the --
 13 by the chief justice upon the
 14 recommendation of the other circuit judges
 15 sitting in that district.
 16 **Q.** So you think that a circuit court judge
 17 would not appoint full-time, only part-time
 18 magistrates?
 19 **A.** Correct.
 20 **Q.** Is there such a thing -- is there -- is
 21 there such a thing as an adjunct magistrate
 22 as well?
 23 **A.** I've used that term, yes, and that's
 24 how I would describe "Uncle Bob" that's
 25 going to marry his niece that day --
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1 **Q.** So --
 2 **A.** -- and that would be --
 3 **Q.** Sorry.
 4 **A.** -- a limited -- limited-purpose
 5 appointment.
 6 **Q.** Okay.
 7 But a -- but a part-time -- that would be
 8 distinct from a part-time magistrate, who
 9 exercises -- or at least can exercise --
 10 **A.** That's how --
 11 **Q.** -- by statute?
 12 **A.** Yes. Thank you. That's how it works
 13 in my head.
 14 **Q.** Would you say that's how it works in the
 15 law?
 16 **A.** I sure hope so, yes.
 17 **Q.** Do you know the names of the -- the
 18 magistrates currently serving under you?
 19 **A.** Yes. And, boy, you know what? I
 20 wish --
 21 **Q.** If you could tell me those.
 22 **A.** -- I wish I had reviewed that to tell
 23 you this morning.
 24 **Q.** To the best of your recollection.
 25 **A.** Ed Wood; John LaBuda, L-A-B-U-D-A;
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1 Rachel Wecksler; Gaston Gosar; oh, and
 2 Chris Leigh from Teton County.
 3 **Q.** And of those five, would you consider all
 4 of them part-time magistrates?
 5 **A.** Yes, I would.
 6 **Q.** Who are capable of exercising the full
 7 array of powers that are granted by statute?
 8 **A.** Correct.
 9 **Q.** Do you have any adjuncts -- adjunct
 10 magistrates out there?
 11 **A.** Probably. There are probably a couple
 12 of weddings that -- that are slated for
 13 this fall. I can't -- I can't remember
 14 specifics on that.
 15 **Q.** Do you recall any of the names of anybody
 16 who might be an adjunct magistrate out there?
 17 **A.** I can't. I'm sorry.
 18 **Q.** So you have a -- at least five magistrates
 19 working under you?
 20 **A.** (Moving head up and down.)
 21 **Q.** As their supervisor, is there any formal
 22 review process of those magistrates?
 23 **A.** There is not.
 24 **Q.** Is there an informal review process?
 25 **A.** Yeah, it's just -- it's -- it's me
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1 watching the work, getting feedback from my
 2 clerks about how a magistrate performs when
 3 I'm not around, and they -- they're not
 4 bashful about saying, "Yeah, that went very
 5 well," or that -- "that didn't go so well.
 6 Maybe you need to visit with" --
 7 **Q.** Okay.
 8 **A.** -- "this magistrate about procedures in
 9 this kind of a situation."
 10 **Q.** And you don't have to give me a name, but
 11 can you give me a few examples of the types
 12 of things that would come up that you would
 13 have to -- you'd have to maybe visit with a
 14 magistrate over?
 15 **A.** Yeah. Fugitive warrants are something
 16 that don't happen very often, and it's a
 17 little -- it's -- it's a process that's --
 18 that's not very well known. So if one of
 19 my magistrates runs into somebody that's in
 20 custody here on a warrant out of state, it
 21 would not be surprising that they're not
 22 very familiar with how to do that and kind
 23 of stumble through that.
 24 And, fortunately, we've -- my clerks
 25 are well versed in that process, and we
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1 have all the forms, and the county attorney
 2 provides the necessary forms. So it may
 3 not be as smooth as silk, but the right
 4 information gets out and the person that's
 5 in custody gets advised of their rights
 6 and -- and their choices as to how they'd
 7 like to proceed.
 8 **Q.** And with those fugitive warrants, you say,
 9 how would that -- would -- would that be
 10 somebody that the circuit court -- you, as a
 11 circuit court judge, would normally handle?
 12 In other words, how does the part-time
 13 magistrate serving under you get those tasks?
 14 **A.** Great question.
 15 Only if I'm out of town.
 16 **Q.** Okay.
 17 **A.** And only if it's something that
 18 requires a hearing. Because even when I'm
 19 out of town, I continue to -- to do most of
 20 the work; reviewing -- reviewing motions,
 21 reviewing warrants. Those kinds of things
 22 I can do remotely, electronically, and so
 23 I -- only if I'm not there and somebody
 24 needs to be seen, will we arrange for a
 25 magistrate.
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1 **Q.** And you say "we will arrange," how does --
 2 what do you mean by that?
 3 **A.** So if -- if I'm out of -- out of town,
 4 for example, and there's somebody that's in
 5 custody, and that -- that's a daily job to
 6 deal with those that -- that were arrested
 7 last night. And if I were -- if I had --
 8 what would happen is I would set bond on
 9 those folks, so they'd have an opportunity
 10 to get out of jail. If somebody was not
 11 able to get out of jail, then they need to
 12 be seen and that -- that bond that I had
 13 set needs to be, perhaps, adjusted or at
 14 least addressed.
 15 So in that case, my chief clerk would
 16 call one of the magistrates, would check
 17 for conflicts, and schedule the hearing.
 18 The magistrate would come in, would sit in
 19 my chair, wear my robe, function as if he
 20 or she was me.
 21 **Q.** So that magistrate -- part-time magistrate
 22 would be doing his or her job, presumably in
 23 the real world.
 24 **A.** Correct.
 25 **Q.** And then they'd get the referral from your
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1 clerk, come in, execute that assigned task.

2 **A.** Yes, exactly.

3 And all the -- all the magistrates that
4 I currently have, they're -- they're
5 part-time as opposed to adjunct --
6 are law-trained, and so they're fairly
7 familiar with the -- with the system.

8 And there are some on that list that
9 don't do all things. Ed Wood, for example,
10 is the -- the Town attorney. Ed is -- is
11 willing to serve as a magistrate so long as
12 his -- he's called upon only to review
13 warrants. He -- he doesn't come to court.
14 That's not something that interests him,
15 and that's fine with me. I just need to
16 have the services available to those who
17 need it.

18 Mr. LaBuda is the local public
19 defender, so if he sits in for me, it's
20 usually on a civil case, not a criminal
21 case, which is too bad because he's really
22 good.

23 Miss Wecksler just joined the public
24 defender's office, so, obviously, we've got
25 a lot of conflicts. So that's why I have

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1 Chris Leigh, who is from Teton County,
2 that's available if and when we run into
3 the all too frequent multilayer conflict of
4 interest in our little town.

5 **Q.** Right.

6 Now, you mentioned Ed Wood, the Town
7 attorney. Obviously, he's expressed a wish
8 to you, it sounds like, that he doesn't want
9 to come into court. That doesn't mean he
10 can't still -- under statute, under your
11 appointment to him, he still can exercise the
12 full array of powers of the statute --

13 **A.** That's correct. That's correct.

14 **Q.** -- as appointed by you?

15 **A.** That's correct.

16 **Q.** I'd like to talk to you about your working
17 relationship with Judge Neely --

18 **A.** Yeah.

19 **Q.** -- and how you met her.

20 When did you meet Judge Neely?

21 **A.** I met Judge Neely when I first took the
22 bench and -- and relocated over here. She
23 was a magistrate for Judge Crow, my
24 predecessor, and was the -- is the -- is
25 the municipal court judge. And so I -- I

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1 can't remember if she -- I think she came
2 over to say hi to me. She sought me out,
3 and so we've -- we met right -- right from
4 the get-go.

5 **Q.** When you -- you said you took over for
6 Judge Crow. Was there a formal turnover
7 process? How did that work?

8 **A.** No, there was not. I was appointed. I
9 had the same question: What's the process?
10 I called the chief justice and said,
11 "What's the process?"

12 And he goes, "Oh, hell, go find
13 somebody to swear you and go to work," so
14 that was the turnover.

15 **Q.** So you didn't get a letter in the mail
16 saying "Your formal training begins on
17 Monday"?

18 **A.** I didn't get any formal training.

19 **Q.** "We'll tell you everything you need to
20 know about taking this position."

21 **A.** That did not happen.

22 **Q.** Okay.

23 So you never met -- well, I should just
24 ask you the question straight out: Did you
25 meet with Judge Crow and Judge Neely --

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1 **A.** (Moving head from side to side.)

2 **Q.** -- with a turnover process or anything
3 like that?

4 **A.** No. Judge Crow left under less than
5 happy circumstances, and so he was -- it
6 was -- the office was vacant when I got
7 here.

8 **Q.** Do you remember what those circumstances
9 were or...

10 **A.** I -- I don't.

11 **MR. DIXON:** I think he probably can't
12 talk about that anyway. I think it's
13 confidential.

14 **MR. CONNELLY:** I think it's of public
15 record in SouthWestlaw.

16 **THE WITNESS:** Yeah, there is a
17 published -- there is a published opinion.

18 **MR. DIXON:** Is that what we turned over
19 to you?

20 **THE WITNESS:** But I have no -- I have
21 no knowledge of that.

22 **Q.** (By Mr. Connelly) Fair enough.

23 **A.** Never even talked with the -- with the
24 man about it.

25 **Q.** So you come into, essentially, an empty

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1 office, and Judge Neely approaches you. Can
 2 you detail everything you can remember about
 3 that conversation?
 4 **A.** I can't even remember if that
 5 conversation happened. I -- I -- I have a
 6 sense that at some point we -- we met and
 7 she introduced herself and, you know, I
 8 introduced myself.
 9 **Q.** Do you remember the impression you had of
 10 Judge Neely at the time?
 11 **A.** Long hair. And -- and very -- very
 12 kind. I thought it was -- I thought it was
 13 a very kind gesture for her to -- to come
 14 say, "Hi. Welcome to Pinedale."
 15 **Q.** She was the magistrate at the time?
 16 **A.** She -- she was.
 17 **Q.** And at some point, you appointed her
 18 magistrate as -- while you were circuit court
 19 judge; correct?
 20 **A.** Correct.
 21 **Q.** Okay. Do you remember when that was?
 22 **A.** Only -- only by reference to the -- to
 23 the documents.
 24 **Q.** Can you please describe for me the powers
 25 Judge Neely possessed as a magistrate?

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1 **Q.** (By Mr. Connelly) Okay, Judge Haws, I'm
 2 just placing before you what's been marked
 3 Deposition Exhibit 38.
 4 **A.** Thank you.
 5 **Q.** I'll just give you a couple seconds to
 6 review that.
 7 **A.** (Reviewing document.)
 8 Right. I've seen that. Thank you.
 9 **Q.** So is this the document that you would
 10 sign -- prepare -- your clerk's would sign
 11 and you would prepare and sign to appoint
 12 Judge Neely as a part-time magistrate with
 13 all -- with the full array of powers?
 14 **A.** Yes.
 15 **Q.** Okay.
 16 Have you served -- well, let's just
 17 talk about -- you said you came in, in
 18 2006.
 19 **A.** (Moving head up and down.)
 20 **Q.** That document, that is not -- it grants
 21 the full array of powers to Judge Neely;
 22 correct?
 23 **A.** Correct.
 24 **Q.** And it is not limited in duration?
 25 **A.** That's correct.

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1 **A.** Judge Neely as a magistrate has all the
 2 authority to do all things that a circuit
 3 court judge can do, with the exception of
 4 preside over jury trials. She's not
 5 law-trained and, therefore, it's my
 6 understanding she's not qualified to
 7 preside over a jury trial.
 8 **Q.** And when you say "that's your
 9 understanding" --
 10 **A.** Um-hum.
 11 **Q.** -- is that by statute?
 12 **A.** That's my understanding from -- from
 13 talking with the -- the -- my more learned
 14 colleagues on the bench.
 15 **Q.** So either by practice or by statute,
 16 that's the one thing she can't do?
 17 **A.** That's correct. That's my
 18 understanding.
 19 **Q.** But as she worked for you as a magistrate,
 20 she was able to exercise the full array of
 21 powers granted by you?
 22 **A.** She did. She sat for me on general
 23 docket basis on a couple of occasions.

(Whereupon, Deposition Exhibit 38 was marked for identification.)

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1 **Q.** Okay. And -- and Judge Neely served with
 2 you continuously since that document -- since
 3 you signed that document --
 4 **A.** True.
 5 **Q.** -- and she took the oath?
 6 **A.** Correct.
 7 **Q.** Have you served with Judge Neely in any
 8 other capacity?
 9 **A.** No.
 10 **Q.** Do you remember -- I think maybe "serving"
 11 as a -- is a confusing word.
 12 Do you remember being on the drug -- the
 13 Sublette County Drug Treatment Court --
 14 **A.** Yes.
 15 **Q.** -- board with her, or...
 16 **A.** I don't recall her involvement in
 17 the -- in the treatment court. I don't
 18 recall that involvement.
 19 **Q.** Was there a steering committee; do you
 20 remember?
 21 **A.** There was a steering committee. Thank
 22 you. Yes, there was, and she did serve on
 23 our steering committee.
 24 **Q.** And what does the Drug Treatment Court do?
 25 **A.** Drug Treatment Court is a national

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1 model that we've adopted in this state and
 2 in this county to deal with repeat
 3 offenders who have addiction issues and the
 4 addiction issues seem to be the -- the
 5 genesis of criminal activity. So the
 6 concept is instead of sending somebody to
 7 jail or to prison, let's get them intensely
 8 supervised and intensive treatment and
 9 intensive involvement with the Court, and
 10 see if we can't break that chain.

11 Q. Okay.

12 Who was on the team; do you remember?

13 A. I headed the team. I have a Drug Court
14 coordinator that's a county employee that
15 wrangles the cats.

16 Q. And who is that?

17 A. Kathy Anderson.

18 And then the team is comprised of the
19 treatment providers, probation,
20 prosecution, and defense.

21 Q. So -- so you said "Drug Treatment Court,"
22 is that separate from the circuit court?

23 A. It is.

24 Q. And how does that work?

25 A. It's -- it's -- it's -- and it

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1 diversion from prison or jail, but you've
 2 gone through the process. You've been
 3 adjudicated, found guilty. And so it's --
 4 it's kind of maybe -- a sentencing
 5 alternative is maybe the best way to
 6 describe that with -- with jail time
 7 hanging out over one's head if -- as the
 8 ultimate consequence for failure.

9 Q. And you mentioned Miss Anderson. Who else
10 is on the team?

11 A. The -- the prosecuting attorney,
12 whoever that is --

13 Q. Okay.

14 A. -- sits.

15 Currently, one of his deputies sits;
16 that's Loretta Welch. That's a very fluid
17 position because it comes and goes
18 depending on the whims of the county
19 attorney.

20 We also have a defense bar
21 representative. That's fairly tricky to --
22 to find in this community because we just
23 have so few lawyers. But we always have
24 somebody there that's watching out for
25 the -- for the rights and interests of our

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1 doesn't -- it's authorized by statute to
 2 have these treatment courts in various
 3 places around the state. Most courts are
 4 administered by the local circuit court
 5 judge or by magistrate appointed for that
 6 purpose.

7 Teton County, the district court judge
8 runs the Drug Court rather than the circuit
9 court, so it can be either/or.

10 So people are -- it's a voluntary
11 participation. If someone is referred,
12 they will make an application to the
13 program. If accepted, that is communicated
14 to the sentencing judge. And that's
15 usually made part of a term of probation
16 that they enroll in and successfully
17 complete the program. And then they go
18 through the program, which can take as
19 little as a year and as long as -- as it
20 takes.

21 Q. So would it be fair to say that it's sort
22 of a diversion program to get them out of
23 normal court and get them on the right track?

24 A. It's different from a diversion program
25 because it happens at the end. It's

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1 participants; make sure that nobody's being
2 mistreated or not treated according to the
3 law.

4 Q. And you mentioned we -- we talked about
5 the steering committee --

6 A. Yes.

7 Q. -- is that separate from the --

8 A. Separate.

9 Q. -- team?

10 A. It's separate, and I think unique to
11 our county. I don't know of another court
12 that has a steering committee.

13 But our program is a little unique in
14 the sense that our program is fully funded
15 by the county commissioners, not funded by
16 the State. It's not funded by federal
17 grants. We are 100 percent locally funded.
18 And because of that fact, I thought it was
19 important that we have a sounding board
20 from the community that would help us
21 ensure that we were spending their money in
22 a way that they were happy with and
23 comfortable with.

24 Q. So that's -- those are volunteer positions
25 then?

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1 A. (Moving head up and down.)
 2 Q. Unpaid?
 3 A. Yes, unpaid.
 4 Q. And did you put out a poll for volunteers?
 5 How did that work?
 6 A. We asked.
 7 Q. Okay.
 8 A. And I thought Judge Neely with her long
 9 experience in the community would be --
 10 would be a good addition.
 11 Q. And did you find -- well, what did she say
 12 when you asked her?
 13 A. She said yes.
 14 Q. Okay.
 15 A. I think she -- I think she liked it.
 16 I -- I suspect -- and this is just a
 17 suspect -- suspicion on my part -- that she
 18 probably would have liked more, because
 19 we -- we really didn't utilize that
 20 committee more than a couple times a year,
 21 and I think that -- I got the sense that
 22 she and a number of other participants
 23 would like if there were a little more meat
 24 on the bone, more to do.
 25 Q. When you say "more," do you mean more

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1 involvement in the process?
 2 A. Yes.
 3 Q. And why do you say that Judge Neely wanted
 4 more involvement?
 5 A. That was just my sense of -- she -- she
 6 always answered a call for help. For
 7 example, we -- we try to -- we try to meet
 8 annually with our steering committee,
 9 review our numbers, statistics, talk about
 10 our recidivism rates and how we're doing.
 11 And beyond that, the steering committee
 12 gets a call from time to time to come and
 13 listen to a participant make a presentation
 14 or a proposal for a community service
 15 project. That's one of the requirements of
 16 our program; that they do something in the
 17 community. So they'll make a pitch, and we
 18 want to have as many people there and make
 19 it as scary as possible so these folks, who
 20 are very unaccustomed to speaking in public
 21 or making that kind of a presentation,
 22 and -- and Ruth always shows up if we -- if
 23 we call and ask for help.
 24 Q. So you said she always answered a call for
 25 help.

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1 A. Yes.
 2 Q. What would you say Judge Neely's
 3 reputation was on the committee?
 4 A. Good.
 5 Q. Good?
 6 A. Yeah.
 7 Q. I mean, she was well liked?
 8 A. Yes.
 9 (Moving head up and down.)
 10 She -- yeah, she -- she was clearly
 11 more than just a body in the room, you
 12 know, she -- she made comments. She made
 13 suggestions. She was also appropriate with
 14 the participants in those -- in those
 15 community service reviews, would give them
 16 positive feedback and -- and helpful
 17 suggestions.
 18 Q. And do you -- you said, obviously, you
 19 knew that she was a municipal court judge?
 20 A. Yes.
 21 Q. Do you think that had something to do with
 22 the fact that she was able to make
 23 appropriate comments and that type of thing
 24 as a member of the steering committee?
 25 A. I don't know. I -- I don't know that I

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1 would attribute it to her -- to her
 2 position on the bench or that's just who
 3 she is, because I've never seen her in
 4 action, so I have no idea what she's like
 5 on the bench.
 6 Q. Did you ever speak to her regarding her
 7 municipal judge position --
 8 A. No.
 9 Q. -- about what it's like to be a judge?
 10 A. I -- I did not.
 11 Q. Okay.
 12 Did you get the sense that she took her
 13 judicial duties seriously --
 14 A. Very.
 15 Q. -- when she was the circuit court
 16 magistrate?
 17 A. Very seriously.
 18 Q. And what makes you say that?
 19 A. You know, the -- the responsiveness to
 20 a call for help. I think that's a -- I
 21 think that's a strong indicator that you're
 22 taking your responsibilities seriously.
 23 Water cooler legend, I guess you would
 24 say --
 25 Q. What do you mean by that?

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1 A. Judge Neely at -- at one point --
2 Judge Neely is legendary for correcting
3 citations and affidavits and sending them
4 back to the officers for corrections so, I
5 mean, that's somebody that's really taking
6 their job seriously.

7 Q. Right.

8 And when you say "correct," can you just
9 amplify that?

10 A. Grammatical corrections. I don't know if
11 she was a teacher in the past, but the --
12 the -- that's my impression.

13 Q. But as a circuit court magistrate, that
14 would be the proper thing to do; correct?

15 A. No. No, it would not. I --

16 Q. And why do you say that?

17 A. To me, that's a -- that's a -- to me,
18 that's invading the province of the
19 executive branch of our government for me
20 to tell the cops how to write their
21 reports, for me to criticize their grammar.
22 I -- it's a personal choice. I -- I think
23 it's -- it's not something I would do.

24 Q. It's not something you would do, but it's
25 not improper under statute?

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1 A. I don't know.

2 MR. DIXON: Well --

3 Q. (By Mr. Connelly) You're not aware of
4 that?

5 MR. DIXON: I'm gonna object. That
6 calls for a legal conclusion.

7 Q. (By Mr. Connelly) You can answer.

8 A. I don't know.

9 Q. But you're not aware of any statute that
10 would -- that would prevent her from sending
11 back a summons or a warrant that she believed
12 was improperly put together?

13 MR. DIXON: Of course, I -- I don't
14 doubt that he's probably qualified to make
15 a legal conclusion.

16 MR. CONNELLY: I don't think I needed
17 to put that in the legal record.

18 THE WITNESS: There are those that
19 would disagree with you.

20 MR. DIXON: Half of --

21 THE WITNESS: Half of everybody every
22 day.

23 In my mind, that may border on -- on --
24 on crossing the line into invading the
25 province of the executive branch.

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1 More fundamentally than that, it's just
2 not a great way to have a great
3 relationship with the men and women you
4 work with every day.

5 Q. (By Mr. Connelly) But she did -- she did
6 respond swiftly to --

7 A. Oh --

8 Q. -- to calls for assistance --

9 A. -- yes.

10 Q. -- as a magistrate?

11 A. Absolutely.

12 Q. And you'd say she did her job
13 professionally?

14 A. Oh, yeah.

15 Q. Has Judge Neely ever, to your knowledge,
16 before this matter was initiated by the
17 Commission, been the subject of any complaint
18 or judicial discipline?

19 A. The only complaint I have -- I have
20 heard is the one from law enforcement that,
21 "Judge, you may not like that we're writing
22 public intox tickets into your court
23 instead of municipal court, but we are and
24 here's why." So that's not a formal
25 complaint; that's just the guys with badges

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1 grumbling a little bit.

2 Q. Bellyaching?

3 A. Yeah.

4 And I went very far out of my way to
5 not get involved in that. "Write your
6 tickets the way you're gonna write them,
7 and I'll deal with it."

8 Q. Can you describe Judge Neely's work ethic?

9 A. I don't know anything about her work
10 ethic, other than to say she responds
11 quickly to any calls for help.

12 Q. And you -- when you say that, you're
13 speaking as Judge Neely's role as a circuit
14 court magistrate?

15 A. Correct. The only thing that would be
16 useful for this situation.

17 Q. And maybe the Drug Treatment steering
18 committee?

19 A. Yes.

20 Q. So in your experience, if Judge Neely were
21 to get a call from either your clerk or
22 someone else who's looking for her in a
23 magistrate capacity, she'd quickly return
24 that phone call; is that fair?

25 A. That's -- I'm -- that is fair, yes.

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1 Q. Okay.
 2 We spoke a little bit about this with
 3 respect to the Drug Treatment Court. Do
 4 you have an opinion regarding, say, her
 5 compassion for others in the community?
 6 A. I think she's a very compassionate
 7 person.
 8 Q. And what makes you say that, besides the
 9 steering committee experience?
 10 A. Just watching her interact at -- at
 11 social functions in the community. The --
 12 the -- just seeing her out and about in the
 13 town. She's always talking with someone
 14 and seems like a -- that would strike me as
 15 someone that's engaged and compassionate.
 16 Q. And when she did have to substitute for
 17 you as on a referral basis as a circuit court
 18 magistrate, what would be your opinion of her
 19 competence in doing that?
 20 A. Fine. I have no complaints.
 21 Q. What is your opinion of Judge Neely's
 22 character?
 23 A. I think she has -- I think she has a
 24 strong, good character. If -- if I didn't
 25 think that, she wouldn't have served as a
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1 magistrate for as long as she did.
 2 Q. Did you ever hear of any allegations or
 3 complaints that Judge Neely was biased when
 4 she was a circuit court magistrate?
 5 A. No.
 6 Q. Did you ever hear of any allegations that
 7 she was prejudiced against anyone --
 8 A. No.
 9 Q. -- as a circuit court magistrate?
 10 A. No.
 11 Q. Did you ever hear of any allegations,
 12 given the fact this is a small town, that she
 13 was biased or prejudiced against someone who
 14 had appeared before her in municipal court?
 15 A. Didn't ever hear that.
 16 Q. Did you ever experience any of that or see
 17 any of that when she was on the steering
 18 court -- the Drug Treatment Court steering
 19 committee?
 20 A. No.
 21 Q. Is it fair to say that Judge Neely, when
 22 she was a circuit court magistrate serving
 23 under you, performed a lot of weddings?
 24 A. Yes.
 25 Q. Okay.
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1 Would it be fair to say that she
 2 performed on average a significantly --
 3 significantly more weddings than most other
 4 magistrates?
 5 A. She was the -- the go-to magistrate for
 6 weddings.
 7 Q. And when you say "the go-to magistrate,"
 8 was that -- was that something that was known
 9 in Pinedale --
 10 A. Right.
 11 Q. -- and Sublette County? Is that fair to
 12 say?
 13 A. I -- based on my -- on my information,
 14 yes.
 15 Q. Do you have an estimate of how many
 16 weddings she would do a year?
 17 A. Not even a guess.
 18 Q. Okay. But it was -- was generally more?
 19 She was the one people would go to?
 20 A. Yeah, people would call our office or
 21 the -- or the -- the county clerk's office,
 22 and I don't know what the county clerk
 23 said. I know that my office would say, "If
 24 you want to get married Monday through
 25 Friday during business hours and we have a
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1 spot in the schedule, the judge would be
 2 happy to do it. If you're looking for an
 3 evening or a weekend or something like
 4 that, here's a list of folks."
 5 And it's -- it's a short list and Ruth
 6 headed up that list.
 7 Q. When you say "Ruth headed up that list,"
 8 would your clerks give her pride of place or
 9 say, "Call Ruth first"?
 10 A. No, I don't think so, but I think as
 11 they -- they read from the list, she was at
 12 the head of the list.
 13 Q. Okay. And she was obviously, on average,
 14 willing to do a lot of weddings per year?
 15 A. I -- I assume, so --
 16 Q. Yeah.
 17 A. -- because that was my sense of -- of
 18 the -- in the last, I don't know, four or
 19 five years, that was her primary function.
 20 Q. Okay.
 21 Do you remember who else is on the
 22 list?
 23 A. Any -- you know, I -- I don't. Any of
 24 the -- the magistrates would be available.
 25 I know that Mr. LaBuda, Mr. Wood indicated
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1 that they'd rather not do those things, so
 2 they would -- their names would not be
 3 included.
 4 Q. Okay. But Judge Neely always kept her --
 5 was always willing to keep her name on the
 6 list?
 7 A. As far as I know. I didn't ever hear
 8 anything to the contrary.
 9 Q. Are you authorized to solemnize marriages
 10 as a circuit court judge?
 11 A. Yes.
 12 Q. And is that what you were referring to
 13 when you said "during business hours"?
 14 A. Right.
 15 Q. And have you solemnized marriages as a
 16 circuit court judge?
 17 A. Many.
 18 Q. Okay. About how many requests would you
 19 say you get a year?
 20 A. The ones that I hear about, that --
 21 that make it through the clerk?
 22 Q. (Moving head up and down.)
 23 A. Not -- not that many. Half a dozen.
 24 Q. Okay. And how many would you say that you
 25 actually solemnize out of those half a dozen

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1 or so?
 2 A. Most.
 3 Q. Okay.
 4 A. Most. And -- and -- so I know there
 5 are -- I assume; I don't know. I assume
 6 there are many, many more requests than
 7 that. Those are the ones I hear about.
 8 I will get requests from folks that --
 9 that I know and care about to do weddings
 10 outside of the Monday-through-Friday
 11 parameters and if I know you and care about
 12 you, I will do it, otherwise, I protect
 13 that family time pretty carefully. Unless
 14 it's a request to go up to Green River Lake
 15 on a Friday afternoon; in which case, I
 16 will probably say yes.
 17 Q. So you're not obligated by law as a
 18 circuit court judge to perform every marriage
 19 that's requested of you?
 20 A. I don't know the answer to that
 21 question. That's a -- that's a -- that'd
 22 never been a question in my mind until
 23 recently.
 24 Q. Well, when you say that you protect that
 25 family time on the weekends --

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1 A. Right.
 2 Q. -- if you were to say no to somebody, "I'm
 3 busy. I'm going away with my kids" --
 4 A. Right.
 5 Q. -- "to fish" --
 6 A. Right.
 7 Q. -- you would not consider that failure to
 8 follow the law?
 9 A. I would not.
 10 Q. Okay.
 11 A. I would not. I would consider it a
 12 failure to follow the law if somebody came
 13 to -- to my office, Monday through Friday,
 14 and we had room on the docket to perform
 15 the ceremony. I would not say no to that.
 16 I think that would be a dereliction of
 17 duty.
 18 Q. But if you were busy, if there were not
 19 time on the docket, there's no legal
 20 requirement that you clean off that docket --
 21 A. No.
 22 Q. -- to --
 23 MR. DIXON: Objection. Foundation.
 24 THE WITNESS: Sorry, Pat. I'm being a
 25 bad client. Sorry.

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1 MR. DIXON: That's okay.
 2 THE WITNESS: No.
 3 I'm not a client. I'm just being a bad
 4 witness.
 5 Q. (By Mr. Connelly) So you -- so you have,
 6 Judge, opted not to solemnize marriages if
 7 you had a busy schedule? A bus- -- a
 8 schedule that would not accommodate a
 9 request?
 10 A. I can't think of an instance where
 11 that's happened, but, yeah.
 12 Q. Would your clerks have done that if
 13 they -- if somebody comes in and says, "I
 14 wanted to get married Tuesday at 11:00" --
 15 A. Right.
 16 Q. -- and you've got a hearing, is that
 17 something the clerks would say, "The judge
 18 cannot do that"?
 19 A. Right.
 20 Q. Okay.
 21 A. And then they would, then, look with
 22 the couple and say, "Here's what's
 23 available."
 24 Q. Okay.
 25 A. I -- if there's -- if there's a special

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1 circumstance, my clerks let me know and we
 2 do everything in our power to accommodate
 3 what the public needs.
 4 **Q.** Would -- would they -- if they want to get
 5 married during the week, is it possible --
 6 and you have absolutely no availability,
 7 they've scoured the schedule, that they could
 8 refer that to a magistrate?
 9 **A.** Sure.
 10 **Q.** Okay. That's one instance where they
 11 might give them the list and say --
 12 **A.** Sure.
 13 **Q.** -- "Judge Haws is stocked up for the whole
 14 week. Here's this?"
 15 **A.** And even if it's -- let's go back to
 16 your example of "I want to be married
 17 Tuesday at 11:00."
 18 "The judge has got court and won't be
 19 available until" whatever the time is, "but
 20 if you -- if that's really an important
 21 date and time to you, here's -- here's a
 22 list of other folks that -- that are
 23 qualified to perform that ceremony for
 24 you."
 25 **Q.** And if your clerks gave that list to the
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1 couple, and they made their way down the
 2 list, one, two, three, four, five, and they
 3 came to number one, Ed Wood, and he said,
 4 "I'm going to a football game. I'm sorry. I
 5 can't do it," that would be fine?
 6 **A.** Would be fine.
 7 **Q.** If they came to Rachel Wecksler, and she
 8 said, "I'm getting my hair done," that would
 9 be fine?
 10 **A.** That's fine.
 11 **Q.** "I've already got an appointment."
 12 **A.** Yeah. Yes.
 13 **Q.** Okay.
 14 **A.** That's how I --
 15 **Q.** And if they came to, say, Judge Neely,
 16 when she was doing marriages, and she said,
 17 "I'm sick as a dog. I can't make it out of
 18 the house," that's fine?
 19 **A.** That's fine.
 20 **Q.** Okay.
 21 Do -- when you -- when you talk about
 22 circuit court judges within business hours,
 23 do you receive a fee for those -- for
 24 solemnizing those marriages?
 25 **A.** Do not.
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1 **Q.** Okay. Is there a reason you don't receive
 2 a fee for doing those during business hours?
 3 **A.** I -- I just think that's part of the
 4 job.
 5 **Q.** Okay.
 6 Would you be able to -- would you be
 7 able to -- do magistrate judges -- or I
 8 should say circuit court magistrates, do
 9 they receive a fee for doing marriages when
 10 they perform them?
 11 **A.** They do.
 12 **Q.** Okay. How is -- how are those fees set?
 13 **A.** Set by the individual magistrate.
 14 **Q.** Okay.
 15 **A.** Yeah.
 16 **Q.** So there's no schedule of fees listed by
 17 statute?
 18 **A.** No.
 19 **Q.** And that's something that the individual
 20 magistrate would work out with the couple --
 21 the requesting couple?
 22 **A.** Yes. Yes.
 23 **Q.** Okay.
 24 Are there any guidelines you know of --
 25 **A.** I don't.
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1 **Q.** -- under the law?
 2 **A.** I don't know of any guidelines.
 3 **Q.** Okay.
 4 **A.** In fact, there was a discussion
 5 recently amongst the judges as to that --
 6 that very inquiry was made, is there a
 7 schedule, is there -- not even Judge Zebre,
 8 who knows everything, was able to lay his
 9 hand on any schedules.
 10 **Q.** And there's -- there are no investigations
 11 or oversight committees on that? That's just
 12 left up to the discretion of the particular
 13 magistrate?
 14 **A.** So far -- so far as I know, correct.
 15 **Q.** If you were, as a circuit court judge, to
 16 get one of those phone calls, you said, from
 17 a -- from somebody you don't know --
 18 **A.** Um-hum.
 19 **Q.** -- that requires you to invade your
 20 personal time with your family over, say, a
 21 Saturday, would you be able to ask for a fee
 22 or -- or receive a fee --
 23 **A.** (Moving head up and down.)
 24 **Q.** -- in that instance?
 25 **A.** I -- I believe I would, yes.
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1 Q. And am I safe in assuming that outside the
 2 marriage context, you couldn't accept a fee
 3 from a litigant in court?
 4 A. That doesn't work, right.
 5 Q. Does anyone assist you -- and I think I
 6 know the answer to this --
 7 A. Sure.
 8 Q. -- but I just want to ask you just to make
 9 sure I have it clear.
 10 Does anyone assist you in chambers with
 11 your marriage-related functions?
 12 A. My chief clerk --
 13 Q. Okay.
 14 A. -- or -- or her deputy clerks.
 15 Q. And who was that again?
 16 A. Amy Knotts, K-N-O-T-T-S.
 17 Q. And what would she typically do?
 18 A. She -- she would -- she's the -- she is
 19 gonna be the first line of communication.
 20 If somebody has a request and -- and we
 21 have time on the schedule, she will give me
 22 a heads-up so that I don't just walk out
 23 onto the bench without a ceremony in hand
 24 or know what's -- what's coming on next up
 25 on the docket.

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1 If there's a scheduling issue, she'll
 2 bring that to my attention. She'll just
 3 coordinate the whole affair. And she'll --
 4 she'll talk with the -- the couple about
 5 what they want: Do they exchange rings; do
 6 they want something uber-serious or short
 7 and sweet; or just try and get a feel for
 8 what the couple's looking for.
 9 Court security also helps. They make
 10 sure that everybody's blowing zeroes.
 11 That's my one rule: If you come into my
 12 courtroom loaded to get married, I'm gonna
 13 send you away.
 14 Q. And do they need to come to you if -- like
 15 we talked about, if the couple comes in on a
 16 Monday and says, "We'll be willing to get
 17 married anywhere in this docket time --"
 18 A. Um-hum.
 19 Q. -- for this week," and Miss Knotts says,
 20 "It's not gonna happen. We've got a five-day
 21 trial. There's gonna be no time" --
 22 A. Right.
 23 Q. -- do they have to come to you to refer
 24 that out to a magistrate --
 25 A. No.

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1 Q. -- or do you --
 2 A. I probably would hear about it, though,
 3 because that's the way -- that's the way
 4 our office operates. It is very customer
 5 service oriented, if you will.
 6 My background is in the lodging -- our
 7 family lodging business, and that just rubs
 8 off on everything. So, you know, it would
 9 be entirely possible that Amy would come to
 10 me and say, "Hey, can you do this over the
 11 lunch break? It will only take five
 12 minutes. Can we squeeze these guys in?"
 13 And we'd have that conversation. If
 14 the answer was no, then we'd provide them
 15 with the list.
 16 Q. Do you have any standing instructions to
 17 Miss Knotts or your other clerks regarding
 18 that practice, officially laid out?
 19 A. No.
 20 Q. So there wouldn't be anything where -- for
 21 instance, do you have a bench book that's
 22 published online --
 23 A. No.
 24 Q. -- where sometimes you'll talk to
 25 litigants about what you like in pleadings

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1 and stuff?
 2 A. There's something online, but it's not
 3 really a bench book.
 4 Q. But there's nothing like that in terms of
 5 "here's what Judge Haws does with marriages"?
 6 A. No.
 7 Q. And it's perfectly acceptable for them to
 8 look at the schedule and refer those
 9 marriages out --
 10 A. Yes.
 11 Q. -- if you didn't have time?
 12 A. Yes.
 13 Q. Are there any -- are there ever any
 14 instances in your time as a district court
 15 commissioner, circuit court magistrate, or
 16 circuit court judge where judges who have
 17 been called on marriages will say, "I can't
 18 do that one. I've got one for you."
 19 Will they, you know, trade marriages --
 20 A. Share?
 21 Q. -- or cover for each other?
 22 A. I've never seen that happen.
 23 Q. Okay. But they can?
 24 A. No reason why you couldn't.
 25 Q. Okay.

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1 A. There's a statewide jurisdiction. I
 2 know that Judge Castor from Laramie -- I
 3 ran into him in Jackson -- says, "What are
 4 you doing poaching?" Because he was doing
 5 a wedding for a friend --
 6 Q. Right.
 7 A. -- in a very lovely place.
 8 Q. So circuit court magistrates, then, would
 9 be able to travel statewide to --
 10 A. I don't -- I don't think so, no.
 11 Magistrates are limited to -- to function
 12 within the judicial district court in which
 13 they're appointed.
 14 Q. But circuit court judges could go
 15 statewide to solemnize marriages?
 16 A. Correct.
 17 Q. Okay.
 18 MR. CONNELLY: Go off the record.
 19 (Whereupon, a break was taken from
 20 10:08 a.m. to 10:18 a.m.)
 21 Q. (By Mr. Connelly) Judge, do you have any
 22 modifications or recovered memories that you
 23 want to change questions -- answers to
 24 questions?
 25 A. I'd like to change a few questions,
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1 Q. As I'm sure you're aware, throughout 2014
 2 a number of federal courts across the country
 3 declared unconstitutional some state laws
 4 that define marriage as being of one man and
 5 one woman.
 6 Was there any general consensus in the
 7 Wyoming judiciary -- circuit courts, district
 8 courts, Supreme Court -- what -- as to what
 9 these rulings might eventually mean for
 10 judges?
 11 A. No.
 12 Q. Okay.
 13 Did you, yourself, anticipate that
 14 these rulings might eventually affect your
 15 work as a judge in Wyoming?
 16 A. No.
 17 Q. Did you think it might affect your work as
 18 a supervisor of other judicial officials?
 19 A. No. I -- I didn't think about it that
 20 deeply.
 21 Q. Were you generally aware of cases pending
 22 throughout the country?
 23 A. Generally, yes.
 24 Q. Okay.
 25 Have you -- were you reading the cases as
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1 but --
 2 Q. Too late. I'm sorry, Judge.
 3 I just have one quick question for you.
 4 A. Yes.
 5 Q. Just taking the --
 6 A. 38.
 7 Q. -- Exhibit 38, yeah.
 8 I just want to make sure I clarify that
 9 for the record. This is -- this is a
 10 document you produced from the magistrate
 11 files for Mr. Dixon in response to our
 12 subpoena?
 13 A. Correct.
 14 Q. And this is the document that granted
 15 Judge Neely the full powers under state law
 16 as circuit court magistrate?
 17 A. Correct. And I think there -- there
 18 were several --
 19 Q. All right.
 20 A. -- I have several in the file.
 21 Q. All right. But this document would have
 22 granted her full powers --
 23 A. Absolutely.
 24 Q. -- as a magistrate?
 25 A. Absolutely.
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1 they came out?
 2 A. No. I -- I didn't. I never read the
 3 cases.
 4 Q. Okay.
 5 Were there discussions amongst circuit
 6 judges or district judges or the Supreme
 7 Court as to the import of these cases?
 8 A. Not that I'm aware of or was ever
 9 involved with.
 10 Q. Okay.
 11 Did you do anything as a circuit court
 12 judge to prepare yourself in the event if
 13 Wyoming's marriage laws were to be declared
 14 unconstitutional?
 15 A. I did not.
 16 Q. Did you ever receive any guidance from any
 17 official state body as to what to do in the
 18 event that Wyoming's marriage laws would be
 19 struck down as unconstitutional?
 20 A. I did not.
 21 Q. So you didn't hear from the Wyoming
 22 Supreme Court?
 23 A. Did not.
 24 Q. The Judicial advisory -- Ethics Advisory
 25 Committee?
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1 A. No.
 2 Q. Or the Commission of Judicial Conduct and
 3 Ethics?
 4 A. I did not.
 5 Q. Were there any newsletters regularly being
 6 circulated to you as --
 7 A. No.
 8 Q. -- a judge?
 9 A. No.
 10 Q. Do you know if any other judges received
 11 any regular newsletters regarding these types
 12 of issues? Same-sex marriage.
 13 A. No. I -- I -- let me amend that.
 14 I -- I receive, weekly, something from
 15 the National Center for State Courts that
 16 talks about judicial discipline issues
 17 around the country, so...
 18 But I requested to receive that, I --
 19 it's not generally circulated, I don't
 20 believe. I don't know who gets that or
 21 doesn't. I request it because I like to
 22 learn from other people's mistakes, instead
 23 of making them myself, if I can.
 24 Q. Do you remember anything in those
 25 newsletters or offerings from that -- that

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1 Q. Okay. How does that happen?
 2 A. Via e-mail, it'll either come from --
 3 from the Supreme Court administrator or
 4 from the Wyoming State Bar.
 5 Q. Are you familiar with the *Guzzo v. Mead*
 6 case which effectively legalized same-sex
 7 marriage in Wyoming?
 8 A. It doesn't sound familiar to me.
 9 Q. Okay. So you don't remember hearing about
 10 that ruling?
 11 A. Is that the case that Judge Skavdahl
 12 ruled on?
 13 Q. It is.
 14 A. Okay. I call it the "Skavdahl
 15 decision." I don't know the parties'
 16 names.
 17 Q. Yes.
 18 A. Yes, I'm aware of that.
 19 Q. Do you remember when you heard about that
 20 ruling?
 21 A. I heard about it -- I can't remember
 22 the specific day that the ruling came down,
 23 but I heard about it the day or -- or,
 24 perhaps, the next day thereafter.
 25 Q. Okay.

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1 national body?
 2 A. No --
 3 Q. Okay.
 4 A. -- not -- not until, you know, 2015.
 5 Q. Okay.
 6 Were there any meetings held at the
 7 circuit court level, the district court
 8 level, or -- or statewide on this issue?
 9 A. No, not that --
 10 Q. Okay.
 11 A. -- I was aware of.
 12 Q. Okay.
 13 And no official memoranda that you recall
 14 being produced or sent around?
 15 A. No.
 16 Q. Okay.
 17 Do you know if there are any advisory
 18 opinions released on this issue?
 19 A. No. I'm not -- I am not aware of any
 20 and have -- have looked. I believe there
 21 are not.
 22 Q. Okay.
 23 Do these generally come down automatically
 24 to judges if they are released?
 25 A. Yes.

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1 And after that decision came down, did you
 2 have a meeting with Judge Neely?
 3 A. I did.
 4 Q. Okay.
 5 Now, in your letter responding to the
 6 Commission's inquiry in this matter, you
 7 outline four separate conversations you had
 8 with her regarding same-sex marriage. I'd
 9 like to take those in order, starting with
 10 that initial meeting you had in --
 11 A. Sure.
 12 Q. -- in October.
 13 Do you remember, to the best of your
 14 recollection, when that was?
 15 A. As -- without -- without referring
 16 to -- to my letter, I -- I couldn't tell
 17 you. Early 2015. I -- I think I have --
 18 perhaps I listed a date. I don't know if I
 19 listed a date, but I don't remember the
 20 specific date that Judge Neely called and
 21 asked to visit.
 22 Q. Could -- if you want to refer to --
 23 refresh your recollection.
 24 A. Oh.
 25 (Reviewing document.)

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1 Okay, well, that would -- that would
 2 confirm my lack of recollection. I know
 3 that it was shortly after
 4 Judge Skavdahl's -- the decision came down
 5 that Judge Neely called and asked for -- to
 6 come visit with me.
 7 MR. CONNELLY: Please go off the record
 8 for one second.
 9 (Whereupon, a discussion was held off
 10 the record.)
 11 Q. (By Mr. Connelly) Okay, Judge.
 12 A. It's her -- it's her laptop now, so I
 13 conceded control of that.
 14 Q. Looking -- looking at what's been
 15 previously marked as Exhibit 12 --
 16 Respondent's Exhibit 12, Judge, does that
 17 refresh your recollection as to when that
 18 first, initial meeting with Judge Neely was?
 19 A. (Reviewing document.)
 20 January 15, 2015. And I -- I'm relying
 21 on that letter. I don't have an
 22 independent recollection today that that's
 23 when it happened, but I have no reason to
 24 doubt that's not when it happened.
 25 Q. Well, if you'll look back, Judge, at
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1 the -- the third full paragraph on what's
 2 been marked as --
 3 A. Shortly -- starting "Shortly after
 4 Judge Skavdahl!"
 5 Q. Yes.
 6 A. Okay.
 7 Q. That's the first conversation I'm
 8 referring to.
 9 A. Okay. Thank you.
 10 Q. If I represent to you that *Guzzo v. Mead*
 11 came down -- that opinion came down
 12 October 17th, 2014, does that refresh your
 13 recollection a little bit?
 14 A. That helps. Thank you.
 15 Yes, it would have been within that
 16 time frame.
 17 Q. Okay. So it would be safe to say late
 18 October, then?
 19 A. (Moving head up and down.)
 20 Thank you, yes.
 21 Q. Please tell me everything you remember
 22 about that conversation from the time
 23 Judge Neely walked into your office. Was it
 24 in your office --
 25 A. We were in chambers --
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1 Q. -- chambers?
 2 A. -- correct.
 3 We sat down next to one other, and I
 4 asked her what I could do for her.
 5 Q. Okay.
 6 A. And she expressed concern about this
 7 decision and -- and relayed to me her
 8 strong conviction that marriage was an
 9 institution reserved to men and women and
 10 that she didn't -- she had concerns about
 11 whether or not she could perform a wedding
 12 ceremony if it involved a same-sex couple.
 13 Q. Okay.
 14 A. And I don't remember the specifics of
 15 the conversation. I remember trying to be
 16 very empathetic to that very difficult
 17 position. I believe I expressed to her
 18 that I held similar views and that each
 19 person needed to decide where -- where --
 20 where they need to stand up for those
 21 views, where it was appropriate and where
 22 it wasn't.
 23 It was -- I -- I believe that I
 24 expressed to her my belief that that was an
 25 essential function of the job, and that if
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1 we were called upon to do it, that -- that
 2 we needed to do that.
 3 But I don't -- no decisions were made
 4 at that point because it was -- the
 5 decision had just come down, and we had no
 6 guidance from any higher authority as to --
 7 to what to do, how to prepare, what steps
 8 to take. And so it was kind of -- I
 9 think -- I don't recall if it was at that
 10 first meeting or a subsequent meeting where
 11 I suggested to her that until we knew more,
 12 my advice was to "keep your head down and
 13 your mouth shut."
 14 Q. Okay.
 15 Do you remember what she said to you after
 16 you -- after she initially told you about her
 17 religious beliefs regarding marriage?
 18 A. (Moving head up and down.)
 19 Q. And that was gonna be that, you know, that
 20 was her belief --
 21 A. Right.
 22 Q. -- and you told her that?
 23 Do you remember what she said to you?
 24 A. She -- she said, "I'm just not sure I
 25 can do that."
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