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INTRODUCTION

The Commission has adopted an extreme position in this case, claiming that because the public now knows that Judge Neely holds the religious belief that marriage is the unique union of one man and one woman, she cannot remain a judge in Wyoming (even a judge with no authority to perform weddings). Accepting the Commission's arguments would not only create an impermissible religious test for public office, it would also chill the constitutional rights and threaten the positions of other judges who hold beliefs (religious or otherwise) about countless contentious issues of public significance. For these reasons and in light of the numerous constitutional violations that any ruling in the Commission's favor would create, Judge Neely is entitled to summary judgment. She thus requests that the Adjudicatory Panel reject the Commission's far-reaching view of its power, affirm her constitutional rights, and dismiss this proceeding.

ARGUMENT

I. The Adjudicatory Panel Must Rule for Judge Neely on Summary Judgment Because the Commission Has Not Identified a Genuine Issue of Material Fact, There Is No Useful Purpose for An Evidentiary Hearing, and Judge Neely Is Entitled to Judgment as a Matter of Law.

Judge Neely has met the summary-judgment standard and thus is entitled to a ruling in her favor. When Judge Neely brought her motion, she had the initial burden of "show[ing] that there is no genuine issue as to any material fact." *Loredo v. Solvay Am., Inc.*, 212 P.3d 614, 622 (Wyo. 2009) (quoting Wyo. R. Civ. P. 56(c)). She has satisfied that burden, and the Commission does not deny that she has. At that point, the burden shifted to the Commission to "come forward with competent evidence admissible at trial showing there are genuine issues of material fact." *Jones v. Schabron*, 113 P.3d 34, 37 (Wyo. 2005) (quotation marks omitted). Indeed, to defeat summary judgment, the Commission *must produce actual evidence* that creates a genuine issue of material

fact, “lest the rule permitting summary judgments be entirely eviscerated by [parties] proceeding to trial on the basis of mere conjecture or wishful speculation.” *Id.* at 38 (quotation marks omitted). Here, however, the Commission does not even allege—much less produce evidence demonstrating—that there is a genuine issue of material fact that necessitates an evidentiary hearing. On the contrary, in its own motion papers, the Commission has already conceded that “there exist no genuine issues of material fact.” Commission’s Mot. for Partial Summ. J. at 1. That concession admits that there is no need for an evidentiary hearing and requires the Adjudicatory Panel to decide this case on summary judgment.

The Commission now inexplicably suggests that this case might not be “the type . . . which should be disposed of” on summary judgment. Commission’s Resp. at 27. Remarkably, however, it does not argue that there is a genuine issue of material fact, and as explained above, that alone is fatal to any suggestion that an evidentiary hearing is appropriate in this case. Instead, the Commission implies that the record might not be “full” or “adequate.” *Id.* But that is simply not true. Tellingly, the Commission has not pointed to anything that it claims is missing from the record. Nor could it. Judge Neely has included more than sufficient evidence supporting all the facts necessary to establish her defenses, including ten affidavits, the complete transcripts of all seven depositions taken in the case, and scores of additional documents. And the Commission, which did not file any affidavits in response to Judge Neely’s Motion and did not conduct discovery in the case other than taking Judge Neely’s deposition, had ample opportunity to introduce evidence supporting any facts that it considered essential to defeat Judge Neely’s Motion. Having opted not to take advantage of that opportunity, it cannot now complain that the record is incomplete.

Because the record is complete, and because there are no factual disputes to be resolved, an evidentiary hearing would serve no useful purpose, and requiring the parties to go forward with one would only waste resources and increase costs. *See Loreda*, 212 P.3d at 620 (“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.”). This is particularly concerning for Judge Neely, given that the Commission’s attorney has indicated that the Commission might try to force her “to pay all of the Commission[’s] . . . costs” in prosecuting her. Neely Dep. at 105-06 (Connelly Aff., Ex. 10). And an evidentiary hearing in this case would waste substantial resources because introducing the evidence necessary to support all the facts in Judge Neely’s Statement of Undisputed Material Facts would require a prolonged hearing (likely more than the two days currently slated) and force many (likely more than a dozen) witnesses to travel across state in order to testify. A hearing would also require the parties to file, and the Adjudicatory Panel to review, motions in limine, trial briefs, proposed findings of fact, and conclusions of law. The Commission simply has not provided any reason to impose this additional work on the parties, the public, and the Adjudicatory Panel.

The Commission’s citation to *Weaver v. Blue Cross-Blue Shield of Wyoming*, 609 P.2d 984, (Wyo. 1980), is unavailing. See Commission’s Resp. at 27. There, the insurance company that moved for summary judgment on the plaintiff’s contractual claims did not meet its burden because it submitted an “abbreviated and incomplete record,” *Weaver*, 609 P.2 at 990, and thus a “useful purpose for trial” remained, *id.* at 986. In particular, the company did not file a contract relevant to one of the plaintiff’s claims (or the regulations referenced in that contract). *Id.* at 988. The court thus needed a more expansive record to resolve the dispute between the parties. Here, however, Judge Neely has submitted more than enough evidence to demonstrate that she is entitled to judgment as a matter of law, and there is no basis for ordering her to endure the expense and burden of a hearing. Judge Neely is thus entitled to a ruling in her favor on summary judgment.

II. Judge Neely Did Not Violate the Wyoming Code of Judicial Conduct by Respectfully Stating Her Religious Beliefs about Marriage.

A. Judge Neely Did Not Violate Rule 2.3 Because Her Stated Beliefs about Marriage Do Not Relate to a Required Duty of Her Judicial Office or Manifest Prejudice Based on Sexual Orientation.

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.” W.C.J.C., R. 2.3(A) & (B) (emphasis added). The Commission contends that Judge Neely’s statement to Mr. Donovan falls within the ambit of the Rule because, the Commission alleges, the “primary function” of her role as a circuit court magistrate was to officiate at weddings. Commission’s Resp. at 2. But regardless of whether performing marriages was ever Judge Neely’s “primary function” as a magistrate, and no matter how often Judge Neely solemnized marriages, Wyoming law provides that the solemnization of marriages is a discretionary authority (not a mandatory duty) of circuit court magistrates. *See* Wyo. Stat. § 20-1-106(a) (Connelly Aff., Ex. 6); 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”).¹ Indeed, the Commission does not contend otherwise. Consequently, Judge Neely’s statements to Mr. Donovan about her inability to solemnize some marriages did not relate to the “performance of judicial duties” and thus cannot violate Rule 2.3.² Moreover, the Commission eschews the legal-dictionary definitions of “bias” and “prejudice,” and in their place, offers two

¹ Regardless of what state statutory law requires, the various constitutional protections discussed in Judge Neely’s Memorandum forbid the government from punishing her for her religious speech and exercise. *See* Neely’s Mem. at 18-44.

² Historically, the Commission has not attempted to apply Rule 2.3 to words or conduct unrelated to the mandatory adjudicative duties of judicial office. Since January 1, 2010, the Commission has only once formed an Investigatory Panel to consider whether a judge violated Rule 2.3. *See* CJCE’s Supplemental Answer to Interrogatory No. 1 (Wardlow Aff., Ex. 57). That case involved a judge who made derogatory remarks during a bail hearing about tribal members. *See id.* The Commission did not feel that those comments demonstrated bias or prejudice in violation of Rule 2.3. *Id.*

alternative definitions of “bias or prejudice” that it claims better convey the meaning of those words as used in Rule 2.3. *See* Commission’s Resp. at 5. First, the Commission suggests the following definition:

The term “bias or prejudice,” when used in reference to a judge, implies a hostile feeling or spirit of ill will or undue friendship or favoritism toward one of the litigants or his attorney, with the formation of a fixed anticipatory judgment on the part of the judge, as contradistinguished from an open state of mind which will be governed by the law and the facts.

Cleveland Bar Ass’n v. Cleary, 754 N.E.2d 235, 245-46 (Ohio 2001), *reinstatement granted*, 771 N.E.2d 863 (Ohio 2002) (citation and quotation marks omitted). But this definition, which prohibits hostility or favoritism “toward one of the *litigants or his attorney*” accompanied by a “fixed anticipatory *judgment*” regarding “the law and the facts,” is plainly confined to the adjudicative context. *Id.* (emphasis added). It thus supports Judge Neely’s (not the Commission’s) position. *See* Neely’s Mem. at 8-10.

The Commission then puts forward what it claims is an “even better” definition (a definition that the Commission appears to have invented and for which it offers no legal support): “prejudice is the belief that one class of persons enjoys lesser or different rights from the majority of persons.” Commission’s Resp. at 5. But even this does not support the Commission’s position because the Commission has adduced no evidence that Judge Neely believes one class of persons enjoys lesser rights with respect to marriage. On the contrary, the undisputed evidence establishes that Judge Neely has “never disputed the legality of same-sex marriage in Wyoming,” and that if a case before her required her to recognize a same-sex marriage, she “would unquestionably recognize that marriage and afford the litigant all the rights that flow from it.” Neely Aff. ¶¶ 32-33. Accordingly, the Commission has failed to demonstrate a violation of Rule 2.3.

B. Judge Neely Did Not Violate Rule 2.2 Because She Has Not Refused to Uphold the Law or to Impartially Perform a Required Duty of Her Judicial Office.

The Commission's Rule 2.2 claim fails because (among other reasons) that Rule applies only to judges' conduct in the adjudicative context, and the Commission does not argue (nor could it) that Judge Neely has refused to "uphold [or] apply the law" in deciding cases brought before her. Neely's Mem. at 11-13. In response, the Commission erroneously asserts that "Judge Neely relies primarily on the comments to Rule 2.2" in advancing this argument. Commission's Resp. at 7. Yet in addition to discussing the comments, Judge Neely also relied on the "Terminology" section of the Code and binding precedent from the U.S. Supreme Court in *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002). See Neely's Mem. at 11-12. The Commission's argument ignores that.

The Commission then responds to an argument that Judge Neely does not make. Judge Neely argues that Rule 2.2 applies only in the adjudicative context. See Neely's Mem. at 11-13. In attempting to respond to this point, the Commission alleges that Rule 2.2 "applies equally to the performance or nonperformance of the judge's duties." Commission's Resp. at 7. That may be true, but it does not address Judge Neely's point that Rule 2.2 applies only in the adjudicative context.

The Commission's Rule 2.2 claim lacks merit for another reason: Judge Neely has not indicated an unwillingness to follow the law because Wyoming law does not require circuit court magistrates like Judge Neely to officiate at any weddings, let alone to officiate at all of them. Neely's Mem. at 13; Neely's Resp. at 8; Wyo. Stat. § 20-1-106(a) (Ex. 6).³ Once again, the Commission's retort to this argument misses the point. The Commission ignores that solemnizing marriages is a discretionary authority (not a mandatory duty) of circuit court magistrates, and asserts instead that "Judge Neely's primary duty" as a magistrate is "the performance of marriages."

³ Unless otherwise indicated, all citations to "Ex." refer to the exhibits attached to the Affidavit of Kenneth J. Connelly and the Affidavit of Judge Neely filed in support of Judge Neely's Motion.

Commission's Resp. at 8. But as explained above, regardless of whether officiating at weddings is Judge Neely's primary function as a magistrate, that does not change the fact that her authority to perform marriages is discretionary and thus that she did not violate the law by indicating that she would be unable to solemnize some marriages. Therefore, the Commission cannot prevail on its claim under Rule 2.2.

C. Judge Neely Did Not Violate Rule 1.2 Because No Reasonable Person Would Conclude that Her Religious Expression about Marriage Compromises Her Impartiality When Adjudicating Cases.

The Commission argues that "any reasonable person," upon learning of Judge Neely's religious beliefs about marriage, would conclude that she could not be "impartial in matters involving gay litigants." Commission's Resp. at 9. But the linchpin of its argument—that Judge Neely allegedly stated a belief that "homosexuals should enjoy lesser rights than straight citizens," *id.*—is patently false, as explained above. *See supra* at 5. Judge Neely has never stated that gays and lesbians have lesser rights; she has stated only that her religious beliefs preclude her from personally solemnizing same-sex marriages.⁴

The Commission also supports its "appearance of partiality" argument with the alleged perceptions of Ana Cuprill (who brought Mr. Donovan's article to the attention of the Commission's Executive Director) and the members of the Investigatory Panel. Commission's Resp. at 10. This argument must be rejected, however, because the reasonable person standard must be analyzed from the objective perspective of a "reasonable person knowing all the circumstances," including all relevant facts, rules, and laws. *Miss. Comm'n on Judicial Performance v. Boland*, 975 So. 2d 882, 895 (Miss. 2008). But neither Ana Cuprill nor the Investigatory Panel knew all the

⁴ To bolster its Rule 1.2 argument, the Commission suggests that Judge Neely repeatedly dialogued with others concerning her views about marriage. Commission's Resp. at 8. But as Judge Neely explained in her Response, this ignores the nature of her subsequent conversations with Mr. Donovan, where, for example, she said "No comment" about six times. *See Neely's Resp.* at 2-3; *Neely Dep.* at 99 (Ex. 10). And the Commission ignores the other instances where Judge Neely declined to discuss her views with other individuals in the media. *Neely Aff.* ¶ 46.

relevant facts, rules, and laws at issue, which were not uncovered and compiled until Judge Neely concluded her discovery and filed her Motion. Moreover, it is offensive to due-process guarantees to suggest, as the Commission does, that the perceptions of the Investigatory Panel—the group responsible for *investigating and prosecuting* the case against Judge Neely—dictate or otherwise influence the outcome of the reasonable person analysis. Accepting that argument would seat the prosecutors as the judges in this proceeding and deny Judge Neely due process.

The Commission additionally argues that the affidavit of Kathryn Anderson, an LGBT individual from Pinedale, provides evidence of “perceived bias,” Commission’s Resp. at 11, when she testified that “[i]t never occurred to [her and her wife] to ask [Judge Neely] to officiate at [their] wedding because [they] know that it would put [her] in a difficult position in light of her religious beliefs about marriage.” Anderson Aff. ¶ 4. But the Commission takes Ms. Anderson’s testimony out of context. Indeed, in the very next paragraph, Ms. Anderson testified that she perceives no bias: “I consider [Judge Neely] to be a conscientious, fair, and impartial person. I have no doubt that she will continue to treat all individuals respectfully and fairly inside and outside her courtroom, regardless of their sexual orientation.” Anderson Aff. ¶ 5. The Commission thus overreaches in its attempt to enlist that evidence as support for its position. In short, the reasonable person knowing all the relevant facts and law will conclude as Ms. Anderson did—that notwithstanding Judge Neely’s beliefs about marriage, she can be fair and impartial when adjudicating cases involving LGBT litigants.⁵

Finally, the Commission cites *Matter of Brown*, 691 N.E.2d 573 (Mass. 1998), and claims that the court there rejected the “exact argument” that Judge Neely raises here. Commission’s Resp.

⁵ Another fact demonstrates why the reasonable person would not perceive Judge Neely to be bias against gays and lesbians: although Judge Neely cannot perform same-sex marriages, she is willing to perform all other functions that circuit court magistrates are permitted to exercise (such as administering oaths) for members of the LGBT community. See Wyo. Stat. § 5-9-212 (Connelly Aff., Ex. 5) (identifying the powers of circuit court magistrates).

at 10. In that case, however, the judge made remarks from the bench that demonstrated extreme animus toward a party appearing before him. *Brown*, 691 N.E.2d at 574-75. Judge Neely has done nothing of the sort here. So any attempt to compare the cases is unavailing.

D. Judge Neely Did Not Violate Rule 1.1 Because She Has Not Refused to Comply with the Law.

In its Response, the Commission incorporated the Rule 1.1 arguments in its Memorandum. Commission's Resp. at 11-12. Judge Neely already responded to those arguments in her Response, and she incorporates that portion of her Response here. *See* Neely's Resp. at 5-6.

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.

Removing Judge Neely from the bench is not only unsupported by the Code, it also violates her constitutional rights to the free exercise of religion and free speech.

A. Applying the Code Here Violates Judge Neely's Religious Freedom.

1. Applying the Code Here Imposes an Unconstitutional Religious Test by Removing Judge Neely from Office Because of Her Religious Beliefs about Marriage.

State Constitutional Analysis. The Commission has adopted an extreme position here—that any judge whose religious beliefs prevent her from performing same-sex marriages (even a judge who stops solemnizing all weddings or a judge who lacks any authority to perform marriages) violates the Code and must be removed from the bench. *See* Commission's Resp. at 3-4 (arguing that the Adjudicatory Panel “should . . . follow[]” an Ohio advisory opinion concluding that “the act of refusing to perform *all marriages* in order to avoid performing same sex marriages” constitutes “bias under Rule 2.3”) (emphasis added); Notice of Commencement of Formal Proceedings ¶ B.2 (Connelly Aff., Ex. 34) (alleging that “Judge Neely's stated position with respect to same sex marriage precludes her from discharging . . . her general duties as . . . [a] Judge”). In other words, the Commission maintains that a person is not qualified to be a judge if her religious beliefs about

marriage forbid her from solemnizing a same-sex union. But this directly violates Article I, Section 18 of the Wyoming Constitution, which states that “no person shall be rendered incompetent to hold any office of trust . . . because of his opinion on *any matter of religious belief whatever.*” Wyo. Const. art. 1, § 18 (emphasis added). Judge Neely raised this argument and supported it with undisputed evidence. Neely’s Mem. at 18-19. But the Commission has not even acknowledged it, let alone tried to respond to it. The Adjudicatory Panel should thus conclude that this state constitutional defense precludes the Commission’s claims against Judge Neely.

Federal Constitutional Analysis. The Commission’s response to Judge Neely’s federal religious-test argument (*see* Commission’s Resp. at 12-14) parrots a recent federal trial court’s decision, *Miller v. Davis*, No. 15-44-DLB, --- F. Supp. 3d ---, 2015 WL 4866729 (E.D. Ky. Aug. 12, 2015). In that case, Kim Davis, a county clerk in Kentucky who had a mandatory duty to issue marriage licenses to members of the public, stopped issuing those licenses to anyone (both same-sex and opposite-sex couples), and ordered everyone in her office to stop issuing those licenses to anyone, because of her religious objection to same-sex marriage. *Id.* at *2-3. As a result of her decision, no member of the public could obtain a marriage license in her county. *Id.* at *6-7. That case is very different from the facts presented here, where Judge Neely has not prevented any government official from marrying same-sex or opposite-sex couples, where all couples in Sublette County can easily find someone to solemnize their marriages, and where no circuit court magistrate has a mandatory duty to perform marriages. *Miller* is thus distinguishable and not persuasive.

Moreover, the Commission’s decision to mirror *Miller*’s federal religious-test analysis is not helpful (*see* Commission’s Resp. at 13-14) because Ms. Davis premised her religious-test arguments on her belief that she was forced to “approve[] and participate in” same-sex marriages. *Miller*, 2015 WL 4866729, at *13. Because of this, the *Miller* court (and the Commission, by copying *Miller*’s analysis) wrongly assumed that a religious-test claim depends on whether a public

official is compelled “to express a particular religious belief as a condition” of retaining office. Commission’s Resp. at 13 (quoting *Miller*, 2015 WL 4866729, at *13). But that is not a requisite element of a religious-test violation, as demonstrated by the U.S. Supreme Court’s decision in *McDaniel v. Paty*, 435 U.S. 618 (1978) (plurality). There, the state did not require the plaintiff to express a religious belief as a condition of office; rather, it precluded him from a legislative position because his religious exercise included serving as a minister of a church. *See id.* at 620-21. Similarly, here, the Commission maintains that Judge Neely cannot be a judge because her religious exercise includes living consistent with her beliefs about marriage. The logic of *McDaniel* (and the other cases cited in Judge Neely’s Memorandum) establishes that the Commission’s prosecution attempts to create an impermissible religious test in violation of the federal constitution. *See Neely’s Mem.* at 19-21. The Commission’s discussion of *Miller* does not refute this.

Finally, the Commission suggests that it has not created an unlawful religious test for judicial office because “[o]ther Judges with deeply held religious beliefs” like Judge Neely’s will perform same-sex marriages. Commission’s Resp. at 14. That argument, however, rests on a faulty premise because judges who believe, first, that marriage is the union of a man and a woman and, second, that they *may* officiate at weddings for other marriages *do not share Judge Neely’s convictions*. Although they might agree on the first point, they do not agree on the second. *See Neely Aff.* ¶ 23 (“[I]f I were to perform a wedding that does not reflect this understanding of marriage [as the union of one man and one woman], I would be violating the tenets of my faith and disobeying God.”). Accordingly, the Commission has failed to undermine Judge Neely’s federal religious-test claim.

2. Applying the Code Here Violates Judge Neely's Free-Exercise Rights Because the State Constitution Provides Broad Protection for those Rights and the Commission's Enforcement of the Code Is Not Neutral or Generally Applicable.

State Constitutional Analysis. Judge Neely has demonstrated three principles that conclusively establish her state free-exercise claim. First, the protection for the free exercise of religion available under the Wyoming Constitution is broad. Neely's Mem. at 21-23. Second, 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 if they threaten "the peace or safety of the state." Wyo. Const. art. 1, § 18; *see also* Neely's Mem. at 23. Third, the Commission does not argue, and no evidence remotely suggests, 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. *See* Neely's Mem. at 23. Yet again, the Commission ignores these state free-exercise arguments, even though those arguments alone establish that the claims against her must be dismissed.

Federal Constitutional Analysis. Judge Neely has shown four independent reasons why her federal free-exercise claim is subject to strict-scrutiny analysis. *See* Neely's Mem. at 23-27 (arguing that (1) the Commission does not enforce the Code in a neutral or generally applicable manner, (2) the Commission seeks to punish Judge Neely for expressing her religious beliefs, (3) the Code provisions at issue call for "individualized governmental assessments," and (4) this prosecution violates a hybrid of Judge Neely's constitutional rights). The Commission, however, ignores all of the arguments that Judge Neely raised. *See* Commission's Mem. at 14-17.

To be sure, the Commission claims that its "enforcement of the code provisions" is "neutral and generally applicable," *id.* at 16-17, but it does not try to refute the bases of Judge Neely's arguments on that issue. The Commission does not deny, for example, that it permits judges who, in

declining to officiate some weddings, manifest bias against strangers, individuals who cannot afford to pay the fee set by the judge, people who schedule weddings at distant locations, or individuals who schedule weddings outside of normal office hours. *See* Neely's Mem. at 24-25. Nor does the Commission deny that those judges' secular reasons for declining to solemnize some marriages (e.g., "I don't want to perform a marriage for strangers," or "I don't want to travel to a distant wedding location after office hours") are given preference over Judge Neely's religious reason. *See Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly*, 309 F.3d 144, 165 (3d Cir. 2002) ("[T]he Free Exercise Clause's mandate of neutrality toward religion prohibits government from deciding that secular motivations are more important than religious motivations.") (quotation marks omitted). The Commission has thus failed to show that its enforcement of the Code is neutral and generally applicable.

3. Applying the Code Here Violates the Establishment Clause Because the Commission's Enforcement of the Code Is Not Neutral Toward Certain Religious Beliefs.

In its Response, the Commission never explains why its actions comport with Establishment Clause principles. Instead, it contends that if it were to uphold Judge Neely's constitutional rights, it would violate the Establishment Clause. *See* Commission's Resp. at 18-19. Yet that argument lacks merit. "[A] significant factor" in assessing an Establishment Clause issue is the government's "neutrality towards religion." *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 114 (2001). Affirming Judge Neely's constitutional rights would do "nothing more than" ensure that she is "treated neutrally" by, first, allowing her to perform some (but not other) weddings just as other circuit court magistrates are permitted to do and, second, ensuring that she is not removed from the bench due to her religious beliefs about marriage. *Id.*

The Commission is not correct when it implies that allowing Judge Neely to remain a judge would "promote[] her . . . convictions at the expenses [sic] of other[]" judges with different

religious beliefs. Commission's Resp. at 18. If the Commission is prohibited from removing Judge Neely because of her beliefs about marriage, she would *not* be treated more favorably than a judge who is a member of a denomination like the United Church of Christ. *See id.* Rather, the government would be treating them equally: they both could remain judges and adhere to their beliefs.

Moreover, allowing Judge Neely to remain a judge raises "no realistic danger that the community would think that the [government is] endorsing religion or any particular creed." *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.*, 508 U.S. 384, 395 (1993). Free-exercise guarantees (among other constitutional protections) require the Commission to accommodate Judge Neely under these circumstances. *See Neely's Mem.* at 18-27. No one would think that by simply doing what the Constitution requires, the government is endorsing religion. *See Rumsfeld v. FAIR*, 547 U.S. 47, 65 (2006) (explaining that people "can appreciate the difference" between conduct that the government sponsors and conduct that it "permits because legally required to do so").

It thus logically follows, and U.S. Supreme Court precedents establish, that Establishment Clause concerns cannot defeat a meritorious free-exercise claim. *See Good News Club*, 533 U.S. at 119 (noting that a violation of the First Amendment "rights of other individuals" must prevail over the "perceived" Establishment Clause concerns raised by the government); *Widmar v. Vincent*, 454 U.S. 263, 276 (1981) (explaining that "the state interest . . . in achieving greater separation of church and State than is already ensured under the Establishment Clause . . . is limited by the Free Exercise Clause"). This is true even when the government regulates public officials or employees. *See, e.g., Brown v. Polk Cty., Iowa*, 61 F.3d 650, 659 (8th Cir. 1995) (rejecting a government employer's "'interest' in avoiding a claim . . . that [it has] violated the establishment clause" as a basis to defeat its employee's free-exercise claim because the Establishment Clause cannot "trump the free exercise clause"); *Slater v. Douglas Cnty.*, 743 F. Supp. 2d 1188, 1194-95 (D. Or. 2010)

(refusing to dismiss a religious-accommodation claim of a county employee who objected to processing paperwork for same-sex domestic partnerships, and explaining that “[a] public sector employer does not unconstitutionally ‘support’ an employee’s religious beliefs by granting an accommodation to that employee” and that “[t]he Constitution does not mandate that individuals surrender their sincerely held religious beliefs as a condition of public sector employment”). Hence, the Commission cannot succeed in its attempt to use the Establishment Clause to undermine Judge Neely’s constitutional claims.

B. Applying the Code Here Violates Judge Neely’s Freedom of Expression by Punishing and Retaliating against Her for Expressing Her Religious Beliefs about Marriage.

The Commission patterns some of its speech arguments after those raised in *Miller v. Davis*, 2015 WL 4866729. *See* Commission’s Resp. at 6. But the speech arguments presented there are very different than those raised here. There, Ms. Davis raised a compelled-speech claim, arguing that issuing and signing a marriage license would constitute an expression of support for the marriage in question. *See Miller*, 2015 WL 4866729, at *11-13 (“Davis contends that this . . . violates her free speech rights by compelling her to express a message she finds objectionable”). But Judge Neely does not raise a compelled-speech defense. Rather, she claims that she did in fact express her religious beliefs about marriage in response to a reporter’s question, and that the Commission is using her honest and respectful expression of her religious beliefs as a predicate for punishment. The Commission’s discussion of *Miller*’s compelled-speech analysis thus is irrelevant and unpersuasive.

The Commission also contends that Judge Neely has no free-speech rights because when she responded to Mr. Donovan, she was acting “as a judge in her official capacity.” Commission’s Resp. at 21; *see also id.* at 6 (“her speech . . . is a product of her official duties”). To support its argument, the Commission cites a single unpublished decision from the Supreme Court of the

Virgin Islands, which states that “while judges retain . . . First Amendment rights with respect to speech made off-the-bench in their capacities as private citizens,” they “possess no First Amendment protection with regard to writings, comments, and other expressions made in their official capacity as judges.” *In re Kendall*, No. 2009–0025, 2010 WL 4962811, at *4 (V.I. July 16, 2010). This dubious holding is in fact much narrower than the Commission suggests. Indeed, each of the four cases cited by the *Kendall* court in support of this proposition indicates that judges engage in expression in their official capacity only when they speak from the bench or in the course of actually performing their judicial duties. See *In re Disciplinary Proceedings Against Gorenstein*, 434 N.W.2d 603, 608 (Wis. 1989) (holding that judge’s comments toward litigants and witnesses during judicial proceedings were not protected speech); *In re Rome*, 542 P.2d 676, 684 (Kan. 1975) (holding that judge’s memorandum opinion ridiculing the defendant was not protected speech); *Jenevein v. Willing*, 493 F.3d 551, 560-61 (5th Cir. 2007) (holding that the First Amendment precludes sanctioning judge for contents of speech at press conference, but that judge could be sanctioned for holding press conference in his courtroom while wearing judicial robe); *Halleck v. Berliner*, 427 F. Supp. 1225, 1239 (D.D.C. 1977) (“A judge’s constitutional right to say what he pleases *from the bench* is not without limits”) (emphasis added).

In contrast, when a judge engages in off-the-bench speech regarding a public issue that does not address a particular adjudicative proceeding or litigant appearing before the judge, that speech enjoys First Amendment protection. See *White*, 536 U.S. at 777-78 (holding that a provision in a code of judicial conduct prohibiting candidates for judicial office from announcing their views on disputed legal or political issues violated the First Amendment); *Miss. Comm’n on Judicial Performance v. Wilkerson*, 876 So. 2d 1006, 1015 (Miss. 2004) (holding that the First Amendment precluded judicial commission from punishing a judge for his off-the-bench expression on an issue of public concern); *In re Hey*, 452 S.E.2d 24, 33 (W. Va. 1994) (applying the First Amendment to

protect a judge's "speech on a matter of public interest when the speech does not pertain to pending or impending cases"). Here, Judge Neely's response to Mr. Donovan was an expression of religious belief, regarding issues of public concern (marriage and religion), unrelated to any adjudicative proceeding, party, or litigant, made off the bench, at home via telephone while in the middle of hanging Christmas lights. That off-the-bench speech is constitutionally protected, and the Commission cannot punish or retaliate against Judge Neely for engaging in it.

C. Applying the Code to Punish Judge Neely Cannot Withstand Strict Scrutiny Because It Is Not Narrowly Tailored to Further a Compelling Government Interest.

The Commission notably does not address Judge Neely's strict-scrutiny arguments. It does, however, affirm that its asserted government interests are the type that it identified in its interrogatory responses and that Judge Neely addressed in her Memorandum. *See* Commission's Resp. at 17. In addition, the Commission raises two other alleged interests, neither of which is implicated here. The first is its interest in avoiding Establishment Clause violations. *Id.* at 18. Yet that interest is refuted above. *See supra* at 13-14. The second is the Commission's interest in "upholding the rule of law." Commission's Resp. at 17. But as Judge Neely has explained in her prior arguments, she has not refused to uphold or follow the law because, among other things, the law gives her the discretionary authority to perform marriages. *See* Neely's Mem. at 12-13; Neely's Resp. at 8; Wyo. Stat. § 20-1-106(a) (Ex. 6). Hence, that interest is not at issue. For these reasons, and all the reasons in Judge Neely's Memorandum, the Commission has failed to meet its burden of satisfying strict scrutiny. *See* Neely's Mem. at 30-35.

IV. This Proceeding Violates Judge Neely's Due Process Rights under the U.S. and Wyoming Constitutions Because of Structural Concerns with the Commission's Procedures.

In support of her due-process claim, Judge Neely has identified (among other things) a particular structural concern with the Commission's procedure—namely, that the five Commission

members who sit on the Investigatory Panel (and thereby act in an investigatory and prosecutorial capacity) will vote on the ultimate disposition of this case (and thereby also act in an adjudicatory role). *See* Neely's Mem. at 36-37. In response, the Commission states that its procedure is "akin to those in other jurisdictions" that have been found to comport with due process. Commission's Resp. at 23-24. But the attachment to the Commission's Response shows that the other states that fall into the "two-panel category" (that is, states that appoint some commission members to investigate and others to adjudicate) do not ask the members who serve on an investigatory panel to participate in the commission's final determination. *See* C. Gray, *Bifurcated Judicial Discipline Systems* at 6-9 (attached to the Commission's Response). Thus, the Commission's response to this structural concern falls flat, and the Adjudicatory Panel should conclude that this proceeding violates Judge Neely's due-process rights under the federal and state constitutions.

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 Because They Fail to Clearly Define the Speech that Is Prohibited and They Prohibit a Substantial Amount of Constitutionally Protected Speech.

In response to Judge Neely's argument that the Code is unconstitutionally vague and overbroad, the Commission states that the Code cannot contain standards more precise than it does because "it would be utterly impossible to proscribe every type of misconduct which might constitute an ethical violation." Commission's Resp. at 25. This is tantamount to an admission that the Code is unconstitutionally vague and overbroad, for it concedes that the Code provisions at issue "are not clearly defined" and thus do not give judges "a reasonable opportunity to know what is prohibited." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

In her Memorandum, Judge Neely has raised serious legal arguments showing that the vagueness of the Code provisions at issue create an "impermissible risk of discriminatory enforcement," *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1051 (1991), and that their overbroad

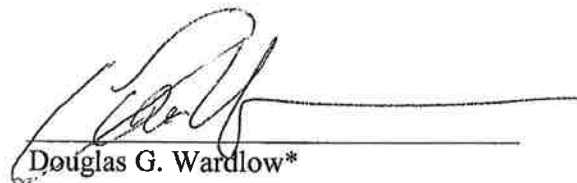
sweep “prohibits a substantial amount of protected speech,” *United States v. Williams*, 553 U.S. 285, 292 (2008). The Commission does not even attempt to grapple with these arguments. Instead, the Commission merely asserts that vagueness and overbreadth challenges have “generally been rejected by the courts,” citing to the case of *In re Disciplinary Action Against McGuire*, 685 N.W.2d 748, 762 (N.D. 2004). *See* Commission’s Resp. at 26-27. But like the Commission’s brief, the *McGuire* court’s treatment of vagueness and overbreadth is conclusory and unpersuasive. *See McGuire*, 685 N.W.2d at 762.

Finally, the Commission argues that Judge Neely indicated to Judge Haws that she understood that her response to Mr. Donovan violated the Code. Commission’s Resp. at 26. In support, the Commission claims that Judge Neely, after responding to Mr. Donovan’s questioning, told Judge Haws that she had “messed up.” *Id.* But when asked at his deposition if Judge Neely used those words, Judge Haws said, “No, . . . those are my words.” Haws Dep. at 111 (Connelly Aff., Ex. 3). Moreover, Judge Haws’s undisputed testimony is that when Judge Neely told him that she had made a mistake in talking to Mr. Donovan, she was referring to her failure to immediately recall, and thus adhere to, Judge Haws’s prior instruction to “keep [her] head down until clarity comes about th[e] issue” of judges and marriage after the *Guzzo* ruling. *Id.* at 112; *see also* Neely Aff. ¶ 36 (“I was distracted [when Mr. Donovan called]. I did not immediately recall Judge Haws’s earlier guidance to refrain from commenting on the matter.”). There is thus no evidence indicating that Judge Neely thought that she violated the Code.

CONCLUSION

For the foregoing reasons, the Adjudicatory Panel should grant Judge Neely’s Motion, deny the Commission’s Motion, and dismiss all charges that the Commission has brought against her.

Dated: December 2, 2015



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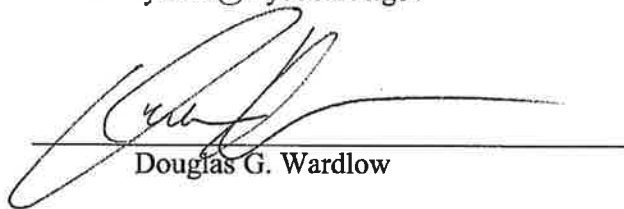
Attorneys for Respondent
**Out-of-State Certification Obtained*

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of December, 2015, I served the foregoing Reply Memorandum of Law in Support of the Honorable Ruth Neely's Motion for Summary Judgment by electronic mail on the following:

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104 South Wolcott Street, Suite 600
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Wendy J. Soto
Executive Director
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Douglas G. Wardlow

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS

STATE OF WYOMING

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

ORDER DENYING MOTION TO STRIKE AFFIDAVIT OF STEPHEN CRANE

The Presiding Officer of the Adjudicatory Panel, having considered the Commission's motion to strike the affidavit of Stephen Crane, and the response to the motion, and having heard the oral argument of counsel during a motion hearing on December 4, 2015, and being advised in the premises hereby denies the motion. The Affidavit will remain in the record.

SO ORDERED this 7th day of December, 2015.

Barbara Dilts

Barbara Dilts, acting on behalf of
Mel C. Orchard III,
Presiding Officer/Hearing Officer

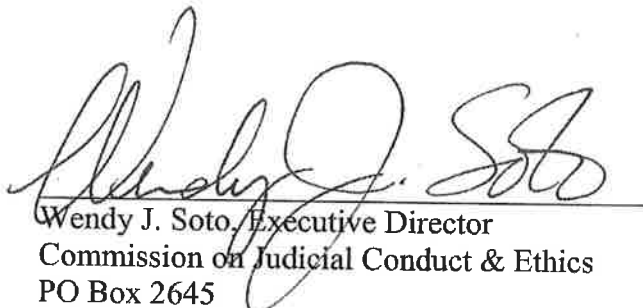
CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of December, 2015, I served the foregoing ORDER DENYING MOTION TO STRIKE AFFIDAVIT OF STEPHEN CRANE by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

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

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

Cc: Adjudicatory Panel

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS

STATE OF WYOMING

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

**ORDER SETTING DEADLINE FOR PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

This matter having come before the Adjudicatory Panel on the Judge Neely's Motion for Summary Judgment, and the CJCE's Motion of Summary Judgment, both filed on October 30, 2015. The Adjudicatory Panel having reviewed the motions and memoranda, and having heard the arguments of the parties in a motion hearing on December 4, 2015, orders as follows:

The Parties shall file Proposed Findings of Fact and Conclusions of Law on or before December 15, 2015. Each party shall also submit an electronic version of the Proposed Findings of Fact and Conclusions of Law in Microsoft Word.

SO ORDERED this 7th day of December, 2015.

Barbara Dilts

Barbara Dilts on behalf of
Mel C. Orchard III,
Presiding Officer/Hearing Officer

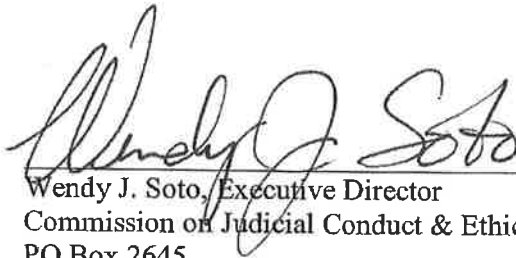
CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of December, 2015, I served the foregoing ORDER SETTING DEADLINE FOR PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

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cc: Adjudicatory Panel

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS

STATE OF WYOMING

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

COMMISSION ON JUDICIAL CONDUCT
AND ETHICS
No. 2014-27
Official Record
FILED
Date: 12/16/15
Wendy J. Soto
Wendy J. Soto

CJCE'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the Adjudicatory Panel on the Commission for Judicial Conduct and Ethics (Commission)'s MOTION FOR PARTIAL SUMMARY JUDGMENT and THE HONORABLE RUTH NEELY'S NOTICE AND MOTION FOR SUMMARY JUDGMENT, and the Panel having reviewed the motions and the responses thereto, and being fully advised in the premises FINDS:

FINDINGS OF FACT

1. The Honorable Ruth Neely sits as Municipal Court Judge for the Town of Pinedale pursuant to appointment by the Town Mayor and approval of the Town Council. *Neely Deposition, pp. 14-17.*
2. She also serves as a Circuit Court Commissioner, pursuant to appointment by the Honorable Curt Haws. *Neely Deposition, pp. 17-18; Haws Deposition, pp. 123-126, Deposition Exhibits 42, 38.*
3. The primary purpose for her appointment as Circuit Court Magistrate is to perform civil marriage ceremonies. *Neely Deposition, pp. 39-43. Haws Deposition, p. 61.*

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4. On October 17, 2014, United States District Court Judge Scott Skavdahl rendered his decision in the case of *Guzzo v. Mead*, 2014 WL 5317797 (Wyo.2014). Following Tenth Circuit precedent, the effect of *Guzzo* was to legalize same sex marriage in the state of Wyoming.

5. Shortly after the *Guzzo* opinion came down, Judge Neely requested a meeting with Judge Haws. The meeting took place sometime in late October. In the course of the meeting Judge Neely informed Judge Haws that she had serious religious convictions regarding same sex marriage and that she would be unable to perform same sex ceremonies. *Haws Deposition*, pp. 81-89.

6. In their meeting, Judge Haws informed Judge Neely that he felt that performing these types of ceremonies was an essential function of her position. Judge Haws further advised Judge Neely that, pending further guidance on the issue, she should “keep your head down and your mouth shut.” *Haws Deposition*, pp. 81-89.

7. Some time around December 8, 2014, Judge Neely received a call from Ned Donovan, an individual who identified himself as a reporter for the Pinedale Roundup. Mr. Donovan began the conversation by asking Judge Neely if she was excited about the prospect of performing gay marriages. Judge Neely told him that she was not and then proceeded to tell him about her religious beliefs and opinions regarding same sex marriage. *Neely Deposition*, pp. 82-92.

8. This conversation and two additional conversations with Mr. Donovan on the same day resulted in the publication in the Sublette Examiner and two

other local publications on December 11, 2014 of an article identified as Deposition Exhibit 4. In the article, Mr. Donovan quotes Judge Neely as making the following statements:

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

...

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

Donovan also explained that Judge Neely’s inability to perform same sex marriages was not based upon her schedule, but on her religious beliefs. Deposition Exhibit 4. Judge Neely agrees that she was accurately quoted in the article by Mr. Donovan. *Neely Deposition, pp. 88-89;*

9. Judge Neely continued to perform traditional ceremonies until December 31, 2014. *Neely Deposition, p. 100, Verified Amended Answer, paragraph 8.b.*

PROCEDURAL HISTORY

This matter comes before the Commission on an “own motion” complaint pursuant to Rule 7(b) of the Rules Governing the Commission on Judicial Conduct and Ethics. A Copy of the Verified Complaint was provided to Judge Neely on January 12, 2015. After inquiries to Judge Neely and Judge Haws, on February 18, 2015, a duly appointed Investigatory Panel found there was reasonable cause to support a finding that Judge Neely engaged in judicial misconduct. Accordingly, disciplinary counsel was engaged and Notice of Commencement of

Formal Proceedings was filed on March 3, 2015. Judge Neely filed a Verified Answer on April 27, 2015.

JURISDICTION

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

STANDARD OF REVIEW

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

Summary judgment is proper only when there are no genuine issues of material fact, and the prevailing party is entitled to judgment as a matter of law. *Uinta County v. Pennington*, 2012 WY 129, ¶ 11, 286 P.3d 138, 141-42 (Wyo.2012). ... The party requesting summary judgment bears the initial burden of establishing a prima facie case that no genuine issue of material fact exists and that summary judgment should be granted as a matter of law. W.R.C.P. 56(c); *Throckmartin v. Century 21 Top Realty*, 2010 WY 23, ¶ 12, 226 P.3d 793, 798 (Wyo.2010). ... Once a prima facie showing is made, the burden shifts to the party opposing the motion to present evidence showing that there are genuine issues of material fact. *Boehm v. Cody Cntry. Chamber of Commerce*, 748 P.2d 704, 710 (Wyo.1987) (citing *England v. Simmons*, 728 P.2d 1137, 1140-41 (Wyo.1986)). The party opposing the motion must present specific facts; relying on conclusory statements or mere opinion will not satisfy that burden, nor will relying solely upon allegations and pleadings. *Boehm*, 748 P.2d at 710. However, the facts presented are considered from the vantage point most favorable to the party opposing the motion, and that party is given the benefit of all favorable inferences that may fairly be drawn from the record. *Caballo Coal Co.*, ¶ 12, 246 P.3d at 871.

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

CONCLUSIONS OF LAW

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

1. Rule 2.3 of the Wyoming Code of Judicial Conduct provides as follows:

Rule 2.3. Bias, Prejudice, and Harassment.

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

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

2. Comment 1 to the Rule recites that a Judge who manifest bias or prejudice "brings the Judiciary into disrepute."

3. The Panel specifically finds that Judge Neely's comments to Ned Donovan were made in the performance of her duties as a Circuit Court Magistrate. She was considered the "go to" judge for performing wedding ceremonies in Sublette County. It was in that capacity and not in her capacity as a member of the general public that Donovan contacted her and, of course her comments related to her unwillingness to perform her duties with respect to same sex marriage. See *Miller v. Davis*, 2015 WL 4747523 (E.D.Ky.2015).

4. Judge Neely raises a number of technical defenses to the charge of violating Rule 2.3. However, the Panel believes that a broad as opposed to a narrow reading of the Code of Judicial Conduct is appropriate. Rule 2.3 could not

be clearer. It expressly prohibits a Judge from manifesting bias or prejudice based upon sexual orientation. Judge Neely's comments, as published in the Sublette Examiner clearly manifest a bias, based upon religious belief, against the LGBT community. Her comments could not reasonably be taken otherwise and constitute the violation of the Wyoming Code of Judicial Conduct. This conclusion is consistent with all of the judicial advisory opinions which have considered the issue. *See In re the Matter of: The Honorable Gary Taber, CJC No. 7251-7-158, before the Commission on Judicial Conduct of the State of Washington (October 4, 2013); Judicial Conduct Board of Pennsylvania Newsletter No. 3 Summer 2014; Arizona Supreme Court Judicial Ethics Advisory Committee, Revised Advisory Opinion 15-015 (March 9, 2015); Nebraska Judicial Ethics Committee Opinion 15-1 (June 29, 2015); Supreme Court of Louisiana, Committee on Judicial Conduct (July 14, 2015); Supreme Court of Ohio, Board of Professional Conduct, Opinion 2015-1 (August 7, 2015); Supreme Court of Wisconsin, Judicial Conduct Advisory Committee (August 18, 2015).*

5. Rule 2.2 reads as follows:

Rule 2.2. Impartiality and Fairness.

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

While the Rule is generally applied in the context of the adjudicative process, the Rule applies equally to the performance or nonperformance of the judge's duties.

A. Garwin, et al., Annotated Model Code of Judicial Conduct, 2d. Ed. (2011), at p. 110. This Rule addresses two interrelated concepts. First, the Judge is ethically

obligated both to uphold and apply the law, the law in this instance being *Guzzo*.
Second, the Judge must perform her duties fairly and impartially. Comment 2 to
this Rule states:

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

Judge Neely's primary duty as a magistrate was the performance of marriages. Following *Guzzo*, the law of Wyoming allowed same sex couples to be married. Judge Neely failed to impartially apply that law by refusing to perform same sex marriages.

6. Rule 1.2 provides as follows:

Rule 1.2. Promoting Confidence in the Judiciary.

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

There are four concepts implicated by Rule 1.2: independence, integrity and impartiality of the judiciary and impropriety or the appearance of impropriety.

Comment 2 to the Rule provides:

[2] A Judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.

Judge Neely asserts by way of affidavit that notwithstanding her publicly announced position on same sex marriage, she can be impartial in matters affecting LBGT litigants. One court has responded to such assertions as follows:

An impartial manner, courtesy and dignity are the outward sign of that fairness and impartiality we ask our fellow citizens, often in the most trying of circumstances, to believe we in fact possess. Surely it is arrogance for us to say to them that we may not seem impartial, but we know we are, and so they must submit.

In re Brown, 691 NE2d 573 (Mass. 1998). But even if Judge Neely is correct in her assertion of impartiality, her comments at a minimum give the appearance of bias or prejudice and thus the appearance of impropriety. Judicial advisory opinions generally apply Rule 1.2 in this circumstance. See *In re the Matter of: The Honorable Gary Taber*, CJC No. 7251-7-158, Before the Commission on Judicial Conduct of the State of Washington (October 4, 2013); *Judicial Conduct Board of Pennsylvania Newsletter No. 3 Summer 2014*; *Nebraska Judicial Ethics Committee Opinion 15-1* (June 29, 2015); *Supreme Court of Ohio, Board of Professional Conduct, Opinion 2015-1* (August 7, 2015); *Supreme Court of Wisconsin, Judicial Conduct Advisory Committee* (August 18, 2015).

7. Rule 1.1 provides as follows:

Rule 1.1. Compliance with the Law.

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

While this rule is generally applied in instances where a Judge violates the law, it is also found to be applicable where a Judge fails to follow the law in connection with a Court proceeding. See, for example, *In re Jacobi*, 715 N.E.2d 873, 875 (Ind. 1999); *Mississippi Com'n on Judicial Performance v. Wells*, 794 S.2d 1030, 1033-34 (Miss. 2004). In this instance, Judge Neely's stated unwillingness to apply the law in the wake of *Guzzo* is a violation of Rule 1.1.

7. Enforcing the code of Judicial Conduct Does Not Impose an unconstitutional religious test.

- a. Both the United States 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.
- b. Under Article VI, § 3 of the U.S. Constitution , “[t]he fact [] that a person is not compelled to hold public office cannot possibly be an excuse for barring him from office by state-imposed criteria forbidden by the Constitution.” *Miller v. Davis*, 2015 WL 4747523 (E.D.Ky.2015) at 13, quoting *Torcasco v. Watkins*, 367 U.S. 488, 81 S. Ct. 1680, 6 L.Ed.2d 982 (1961).
- c. There is no evidence that the State is requiring Judge Neely to express a particular belief as a condition of public employment, nor is there evidence that the State is requiring her to surrender her free exercise rights in order to perform her duties. Therefore, enforcing the Code of Judicial Conduct does not impose an unconstitutional religious test.

8. Enforcing the Code of Judicial Conduct does not violate Judge Neely’s free-exercise rights.

- a. The First Amendment provides that “Congress shall make no law respecting an establishment of religion, *or prohibiting the free exercise thereof.*” *See Cantwell v. Connecticut*, 310 U.S. 296, 303, 60 S.Ct.

900, 84 L.Ed. 1213 (1940) (applying the First Amendment to the states via the Fourteenth Amendment).

- b. In this case, the state action at issue is the Commission's enforcement of the Code provisions.
- c. There being no evidence in the record to suggest that the Commission's enforcement of the code provisions is anything but neutral and generally applicable, there being no evidence in the record to suggest the code provisions are anything but neutral and generally applicable, and there being no evidence that the Code provisions were adopted to infringe upon or restrict practices because of their religious motivation, it should be upheld if it is rationally related to a legitimate government purpose.
- d. The Panel finds that the Commission's enforcement of the code provisions clearly meet the rational basis test: it serves the State's interest in upholding the rule of law, and it rationally relates to several narrower interests identified in the *Wyoming Code of Judicial Conduct*: it ensures that the judiciary is not brought into disrepute, preserves the independence, impartiality, integrity and fairness of the judiciary and promotes public confidence in the judiciary.
- e. Therefore, the Commission's enforcement of the code provisions does not infringe upon Judge Neely's free exercise rights.

9. Enforcing the Code of Judicial Conduct does not violate the Establishment Clause.

- a. Judge Neely claims that the Commission's enforcement of the code provisions violates her religious freedom and 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. 1, § 21; § 25.
- b. To the contrary, the State has interests in preventing Establishment Clause violations by Judge Neely. See U.S. Const. amend. I (declaring that "Congress shall make no law respecting the establishment of religion").
- c. Judge Neely has arguably committed such a violation by openly adopting a policy that promotes her own religious convictions at the expenses of others.
- d. In such situations, "the scope of the employees' rights must yield to the legitimate interest of governmental employer in avoiding litigation." *Id.*, quoting *Marchi*, 173 F.3d at 476.
- e. The State also has a countervailing interest in upholding the rule of law and the Code of Judicial Conduct. *Id.*, see generally *Papachristou v. City of Jacksonville*, 405 U.S. 156, 171, 92 S.Ct. 839, 31 L.Ed.2d

110 (1972) (“The rule of law, evenly applied to minorities as well as majorities, ... is the great mucilage that holds society together.”).

- f. For these reasons, the Panel finds that the Commission’s enforcement of the code provisions not only do *not* violate the Establishment Clause of the First Amendment to the U.S. Constitution and the corresponding provisions of the Wyoming Constitution; the Commission’s enforcement of the code provisions serve the additional interests of preventing Establishment Clause violations by Judge Neely and upholding the integrity of the judiciary. See U.S. Const. amend. I (declaring that “Congress shall make no law respecting the establishment of religion”).

10. Enforcing the Code of Judicial Conduct does not violate Judge Neely’s Freedom of Expression.

- a. The First Amendment provides that “Congress shall make no law ... abridging the freedom of speech.” Under the Free Speech Clause, an individual has the “right to utter or print, [as well as] the right to distribute, the right to receive and the right to read.” *Griswold v. Connecticut*, 381 U.S. 479, 483, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965)(internal citations omitted).
- b. While judges retain limited First Amendment rights relative to laypersons with respect to speech made in their capacities as private citizens, “courts have *universally* held that judges possess no First

Amendment protection with regard to writings, comments, and other expressions made in their official capacity as judges.” *In re Kendall*, S.Ct. Misc. No. 2009-0025, 2010 WL 4962811, (July 16, 2010)(emphasis added).

- c. The Panel finds that Judge’s Neely’s conduct or ‘speech’ at issue are Judge Neely’s comments to reporter Ned Donovan regarding her unwillingness to perform her duties with respect to same sex marriage.
- d. Because her speech is a product of her official duties, because it pertained to her job description as a judge and because her speech was made in her official capacity as a judge, it is not entitled to First Amendment protection.

12. Judge Neely’s argument that she has been deprived of procedural due process is premature. The process is ongoing, there is a hearing pending and Judge Neely has suffered no deprivation of life, liberty or property. Thus, the argument is not ripe until disciplinary action is imposed. In any case, this argument (procedural due process) has been rejected by every state supreme court that has considered it because the decision of the Commission is subject to review by the Wyoming Supreme Court. See *C. Gray, Center for Judicial Ethics, Bifurcated Judicial Discipline Systems* (Sept. 2015).

13. The Wyoming Code of Judicial Conduct is based almost exclusively on the ABA Model Code of Judicial Conduct. As such this Code is derived from

generations of scholarly discussion, debate and judicial construction. Its terms and concepts are or should be well understood in the profession. Courts that have considered the argument routinely hold that the Code of Judicial conduct is neither vague nor overbroad. In *In re Disciplinary Action Against McGuire*, 685 N.W.2d 748, 762 (ND.2004); *In re Lowry*, 999 S.W.2d 639 (Tex.Rev.Trib.1998), pet denied; *Napolitano v. Ward*, 317 Fed.Supp. 79 (N.D.Ill.1970) “for cause”; *Keiser v. Bell*, 332 Fed.Supp. 608 (Ed.PA.1971); *Hallock v. Berliner*, 427 Fed.Supp. 1225 (D.D.C.1997); *In re Nowell*, 23 N.C. 235, 237, S.E.2d. 246 (1977); *Nicholson v. Judicial Retirement and Removal Comm.*, 562 S.W.2d 306 (Ky.1978) and *In re Gillard*, 271 N.W.2d 785 (Minn.1978).

ORDER

WHEREFORE, the Adjudicatory Panel finds that Judge Neely’s Motion for Summary Judgment should be denied and that the Commission’s Partial Motion for Summary judgment should be granted to the extent Judge Neely has violated Rule 1.1, 1.2, 2.2 and 2.3 of the Wyoming Code of Judicial Conduct. The matter is hereby referred for hearing on sanctions, beginning on January 11, 2016.

DATED this ___ day of _____, 2015.

Melvin C. Orchard, III
Presiding Officer/Hearing Officer

CERTIFICATE OF SERVICE

I, Patrick Dixon, do hereby certify that on the 16 day of December, 2015, I served the above and foregoing *CJCE's Proposed Findings of Fact and Conclusions of Law* via email or U.S. mail, postage prepaid, as noted below:

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Patrick Dixon

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

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

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

FILED

Date: 2/12/16/15

Wendy J. Soto

**THE HONORABLE RUTH NEELY'S PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Honorable Ruth Neely respectfully submits the following Proposed Findings of Fact and Conclusions of Law in support of her Motion for Summary Judgment.

Findings of Fact

Judge Neely's Public Service

1. Judge Neely has served as Pinedale Municipal Judge for approximately 21 years. Neely Aff. ¶ 3.
2. In that capacity, she hears all cases arising under the ordinances of Pinedale, which 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 (Ex. 1);¹ Town of Pinedale, Wyoming, Municipal Court & Judge, Duties (Ex. 2).
3. Judge Neely has no authority to perform weddings in her capacity as Pinedale Municipal Judge. Jones Aff. ¶ 7.
4. Judge Neely has also served the community as a circuit court magistrate, having been originally appointed by then-County Judge John Crow in or around 2001. She was most recently reappointed in 2008 by Circuit Court Judge Curt Haws as a magistrate with the authority to

¹ Unless otherwise indicated, all citations to "Ex." refer to the exhibits attached to the Affidavit of Kenneth J. Connelly and the Affidavit of Judge Neely filed in support of Judge Neely's Motion for Summary Judgment.

exercise the full array of powers permitted under Wyoming Statutes Section 5-9-212. Neely Aff. ¶ 5; Haws Dep. at 42-45, 125-26 (Ex. 3); 2008 Circuit Court Magistrate Appointment Letter for Judge Neely (Ex. 4).

5. The powers of a circuit court magistrate include the administration of oaths, the issuance of subpoenas, the issuance of search and arrest warrants, and the performance of marriages. Wyo. Stat. § 5-9-212 (Ex. 5).

6. 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) (Ex. 6).

7. Magistrates and other judges may decline to perform marriage ceremonies for many reasons. They may decline weddings for anyone who is not a close friend or family member, they may decline weddings occurring after-hours, they may decline weddings that are in their estimation too far away, and they may decline weddings if the couple cannot pay the fee the judge sets. *See, e.g.*, Soto Dep. at 151-54 (Ex. 7); Haws Dep. at 62-63, 68-69 (Ex. 3); Smith Dep. at 41-44 (Ex. 8).

8. When deciding whether, when, and how to perform weddings, circuit court magistrates have complete discretion in setting fees. Haws Dep. at 68-69 (Ex. 3).

9. 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 51-53, 56, 58-59 (Ex. 3); Smith Dep. at 34-35 (Ex. 8).

10. 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 (Ex. 9); Neely Aff. ¶ 11.

Judge Neely’s Religious Beliefs and Practice

11. 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.

12. 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 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* (Ex. 11).

13. It is Judge Neely's conviction that if she were to perform a wedding that does not unite one man and one woman, she would be violating the tenets of her faith and disobeying God. Neely Aff. ¶ 23.

14. 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.

15. Judge Neely's religious beliefs about marriage prevent her from presiding over some weddings, but those beliefs do not affect how she decides cases. Neely Aff. ¶ 32.

16. Given the type of cases Judge Neely hears, 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, 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

17. Soon after the federal court ruling that legalized same-sex marriage in Wyoming in October 2014, 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. Neely Dep. at 76-77 (Ex. 10); Haws Dep. at 83 (Ex. 3); Neely Aff. ¶ 25.

18. 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 she stated that she would not be able to solemnize same-sex marriages. Neely Dep. at 77 (Ex. 10); Haws Dep. at 83-84 (Ex. 3); 1/17/15 Email from Judge Haws to Wendy Soto with Letter Attachment (Ex. 14).

19. Judge Haws recognized that Judge Neely was in a very difficult position, especially given the novelty of this question and the fact that no judicial officials in Wyoming had received any guidance on how to resolve it. Haws Dep. at 85, 88, 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).

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

Ned Donovan's Inquiry

21. On 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 strand of lights. Neely Dep. at 94-95 (Ex. 10); Neely Aff. ¶ 34. She checked

her cell phone, saw that she missed a call from an unknown number, and returned the call. Neely Dep. at 82-83, 94-95 (Ex. 10); Neely Aff. ¶ 34.

22. Upon dialing the unknown number, Judge Neely reached Ned Donovan. Neely Dep. at 83 (Ex. 10). He asked Judge Neely 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 (Ex. 16).

23. 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. So she honestly 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.

24. 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 88-89 (Ex. 10); Neely Aff. ¶ 39.

25. After that call ended, 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 call attention to them. Neely Dep. at 96-98 (Ex. 10); *see also* Anderson Aff. ¶ 6. Judge Neely thus called Mr. Donovan back about twenty minutes later and requested that he substitute the following statement in place of her earlier response to him: "When law and religion conflict, choices have to be made. I have not yet been asked to perform a same-sex marriage." Neely Aff. ¶ 42; Neely Dep. at 96-98 (Ex. 10).

26. 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).

27. 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).

28. Judge Neely could not compromise her beliefs by agreeing to solemnize same-sex marriages in exchange for Mr. Donovan's promised retraction, so she repeatedly declined to comment. Neely Dep. at 99 (Ex. 10); Neely Aff. ¶ 43.

29. Soon thereafter, Judge Neely called Judge Haws and told him that she had responded to Mr. Donovan's question about same-sex marriage. Judge Haws told her that they would talk again once Mr. Donovan published his article. 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

30. The demand for same-sex marriage is not high in Pinedale or Sublette County. Haws Dep. at 109 (Ex. 3).

31. 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. Wood Aff. ¶ 8; Cuprill Dep. at 46-50 (Ex. 15).

32. 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. 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).

33. 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).

34. At no point since same-sex marriage was legalized in Wyoming has anyone “been denied [the] opportunity” to get married. Haws Dep. at 109 (Ex. 3).

35. “There 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”).

36. 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.

37. 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).

38. 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).

Ned Donovan’s Articles

39. On December 9, 2014, the Sublette Examiner published in the print version of the paper Mr. Donovan’s article about Judge Neely and her beliefs about marriage. 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.*

40. 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).

41. 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.*

42. After reading the Donovan 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).

The Genesis of the Commission’s “Own Motion” Proceeding Against Judge Neely

43. Shortly after Mr. Donovan’s article was published, Pinedale resident Ana Cuprill read it. Cuprill Dep. at 64-66 (Ex. 15). Ms. Cuprill is 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 (Ex. 18).

44. 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).

45. 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’s friend Jeran Artery, the President of Wyoming Equality, an LGBT advocacy group, arranged for her to stay the night at Ms. Soto’s house. *Id.* at 71-72.

46. While at Ms. Soto’s Christmas party, Ms. Cuprill and Mr. Artery discussed Mr. 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).

47. After becoming aware of the article, Ms. Soto suggested that Ms. Cuprill might want to file a complaint and requested that Ms. Cuprill email her a copy of the article to document their conversation. Soto Dep. at 83-86 (Ex. 7).

The Commission Investigation Commences

48. On December 22, 2014, Ms. Cuprill emailed Ms. Soto a copy of the online version of the Sublette Examiner article. Commission’s Answer to Interrogatories No. 14 (Ex. 22); Soto Dep. at

83-86 (Ex. 7); 12/22/14 Email from Ana Cuprill to Wendy Soto attaching Sublette Examiner Article (Ex. 23).

49. Later that day, Ms. Soto selected the members of an Investigatory Panel to review the matter. Soto Dep. at 110, 115 (Ex. 7); Tiedeken Dep. at 45-47 (Ex. 25).

50. The Investigatory Panel 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 (Ex. 27) (hereinafter "1/6/15 Transcript").

51. During that call, the Investigatory Panel concluded that Judge Neely's response to Mr. Donovan, in which she stated her religious beliefs regarding marriage, may have violated Rule 2.3 of the Wyoming Code of Judicial Conduct (the "Code"). 1/6/15 Transcript at 5-11 (Ex. 27).

52. During that call, the Investigatory Panel decided to commence an investigation, and began by requesting 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).

Judge Neely Seeks Official Guidance and Meets with Judge Haws

53. That same day, January 6, 2015, 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 (Ex. 52); 1/6/15 Letter from Judge Neely to Judicial Ethics Advisory Committee (Ex. 53).

54. 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 (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 the Commission had already brought this proceeding against her. *Id.*

55. On or about January 15, 2015, immediately after receiving the Commission's inquiry letter, Judge Haws met with Judge Neely. 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.*

56. Because of the pendency of the Commission's investigation, Judge Haws deemed it appropriate to suspend Judge Neely as a circuit court magistrate at that time. Haws Dep. at 103-107 (Ex. 3).

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

57. 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).

58. Judge Neely responded to the Commission's inquiry 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 at 2 (Ex. 56). She further stated 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 a Formal Proceeding Against Judge Neely

59. 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 (Ex. 29) (hereinafter "2/18/15 Transcript").

60. The Investigatory Panel concluded that, based upon Judge Neely's response to Mr. Donovan, there was reasonable cause to believe that she violated the Code. 2/18/15 Transcript at 4-7 (Ex. 29).

61. The Investigatory Panel then appointed an Adjudicatory Panel and hired Disciplinary Counsel to institute a formal proceeding against Judge Neely. 2/18/15 Transcript at 8-9 (Ex. 29).

The Commission Files its Formal Notice

62. On March 4, 2015, the Commission filed its Notice of Commencement of Formal Proceedings against Judge Neely. *See* Notice of Commencement of Formal Proceedings (Ex. 34) (hereinafter "Notice").

63. In its Notice, the Commission alleged that Judge Neely had violated four Code rules—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). Notice at 4-5 (Ex. 34).

64. The Commission also asserted in its Notice 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." Notice at 5 (Ex. 34).

65. On April 27, 2015, Judge Neely filed a Verified Answer to the Commission's Notice, denying that she had violated the Code and raising constitutional defenses. Verified Answer (Ex. 35).

The Commission Files an Amended Formal Notice

66. On August 28, 2015, the Commission filed an Amended Notice of Commencement of Formal Proceedings. Amended Notice of Commencement of Formal Proceedings (Ex. 36) (hereinafter "Amended Notice").

67. 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). Amended Notice at 5-6 (Ex. 36).

68. The Commission also 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. Amended Notice at 4 (Ex. 36).

69. The Commission finally 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.” Amended Notice at 6 (Ex. 36).

70. On September 16, 2015, Judge Neely filed a Motion to Dismiss the New Claims in the Amended Notice of Commencement of Formal Proceedings, arguing that those claims violate her 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. Motion to Dismiss (Ex. 37).

71. 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 (Ex. 38).

72. The Presiding Officer of the Adjudicatory Panel then signed an Order Dismissing Amended Claims on October 5, 2015. Order Dismissing Amended Claims (Ex. 39).

73. Soon thereafter, Judge Neely filed her Verified Amended Answer to the Commission’s Notice. Verified Amended Answer (Ex. 40).

74. On October 30, 2015, Judge Neely filed a Motion for Summary Judgment, in which she argued that there are no disputed issues of material fact, that she is entitled to judgment as a matter of law, and that the Adjudicatory Panel should dismiss all the Commission’s remaining claims against her.

Conclusions of Law

1. Judge Neely did not violate Rule 2.3. Her response to Mr. Donovan expressed beliefs about marriage that are “based on decent and honorable . . . premises” and are “held[] in good faith by reasonable and sincere people.” *Obergefell v. Hodges*, 135 S. Ct. 2584, 2594, 2602 (2015). Stating those decent and honorable beliefs does not manifest bias or prejudice based on sexual orientation and thus does not violate Rule 2.3. In addition, Judge Neely’s response to Mr. Donovan did not relate to a duty of her judicial office because Wyoming law provides that circuit court magistrates “*may* perform the ceremony of marriage,” Wyo. Stat. § 20-1-106(a) (Ex. 6) (emphasis added), but does not impose any duty to do so.

2. Judge Neely did not violate Rule 2.2. That Rule applies only to judges’ conduct when deciding cases between parties, and the undisputed facts establish that Judge Neely has never

refused to uphold the law or act impartially when deciding cases brought before her. Moreover, even outside the adjudicative context, Judge Neely has not refused to uphold the law because state law gives her discretionary authority to perform marriages, but does not require her to do so. *See* Wyo. Stat. § 20-1-106(a) (Ex. 6). Nor has Judge Neely failed to impartially perform a judicial duty. In addition to the fact that Judge Neely does not have a duty to perform weddings, she has not acted partially, which the Code defines as acting with “bias or prejudice in favor of, or against, . . . parties,” W.C.J.C., Terminology, because she has not manifested bias or prejudice against any group of individuals.

3. Judge Neely did not violate Rule 1.2 because a reasonable person knowing the law and relevant facts, along with the record in this case, would conclude that her religious beliefs about marriage do not compromise her impartiality when deciding cases. Thus, the Commission has failed to present clear and convincing evidence that Judge Neely engaged in impropriety or created the appearance of impropriety in the mind of the reasonable person knowing the law and relevant facts.

4. Judge Neely did not violate Rule 1.1 because she has not refused to comply with the law.

5. Interpreting and applying the Code in a manner that removes Judge Neely from office because of her religious beliefs about marriage would impose a religious test in violation of Article 1, Section 18 of the Wyoming Constitution, which provides that “no person shall be rendered incompetent to hold any office of trust . . . because of his opinion on any matter of religious belief whatever.” Based on her religion, Judge Neely believes that marriage is the union of a man and a woman and that she cannot solemnize any other marriage. The Commission seeks to remove Judge Neely from her judicial positions (even her position in which she has no authority to perform weddings) because of these religious beliefs about marriage. That violates the clear language of Article 1, Section 18 of 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 the undisputed evidence establishes that neither Judge Neely’s religious beliefs about marriage nor her peaceful expression of those beliefs in response to a reporter’s question constitutes an act of licentiousness or conflicts with the peace or safety of the state. Accordingly, Article 1, Section 18 prohibits the Commission from interpreting and applying the Code in a manner that removes Judge Neely from office because of her religious beliefs about marriage.

6. Interpreting and applying the Code in a manner that removes Judge Neely from office because of her religious beliefs about marriage would impose a religious test in violation of the federal constitution. *See* U.S. Const. amend. I; U.S. Const. art. VI, cl. 3. The Commission may not foreclose “public offices to persons who have . . . a belief in some particular kind of religious concept.” *Torcaso v. Watkins*, 367 U.S. 488, 494 (1961). Yet the Commission seeks to remove from office Judge Neely because she believes, based on her sincere religious convictions, that marriage is the union of a man and a woman and that she cannot solemnize any other marriage. The federal constitution forbids the Commission from doing that.

7. Interpreting and applying the Code in a manner that punishes Judge Neely because of her religious beliefs about marriage would violate her free-exercise rights under Article 1, Section 18

and Article 21, Section 25 of the Wyoming Constitution. The protection for the free exercise of religion secured by these constitutional provisions is broad, and it includes Judge Neely's religious belief that marriage is the union of a man and a woman and that she cannot solemnize any other marriage. The only limitation on this constitutional protection is if a person seeks "to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state." Wyo. Const., art. 1, § 18. The undisputed evidence establishes that neither Judge Neely's religious beliefs about marriage nor her peaceful expression of those beliefs in response to a reporter's question constitutes an act of licentiousness or conflicts with the peace or safety of the state. Accordingly, the free-exercise protections in the Wyoming Constitution prohibit the Commission from interpreting and applying the Code in a manner that punishes Judge Neely because of her religious beliefs about marriage.

8. Interpreting and applying the Code in a manner that punishes Judge Neely because of her religious beliefs about marriage would violate her free-exercise rights under the First Amendment to the U.S. Constitution. Because (1) the Commission does not enforce the Code in a neutral or generally applicable manner, (2) the Commission seeks to punish Judge Neely for expressing her religious beliefs, (3) the Code provisions at issue call for individualized governmental assessments, and (4) the proposed interpretation and application of the Code would violate a hybrid of Judge Neely's constitutional rights (both her right to the free exercise of religion and her right to free speech), the Commission's attempt to apply the Code here is subject to strict scrutiny. But this application of the Code does not further a compelling state interest and is not a narrowly tailored means of achieving a compelling state interest. Of particular note, Judge Neely has demonstrated many ways that the government can accommodate her religious convictions while still furthering its asserted interests. Therefore, strict-scrutiny analysis is not satisfied, and federal free-exercise protections prohibit the Commission from punishing Judge Neely.

9. Interpreting and applying the Code in a manner that punishes and retaliates against Judge Neely for expressing her religious beliefs about marriage would violate her free-speech rights under the First Amendment to the U.S. Constitution and Article I, Sections 20 and 21 of the Wyoming Constitution. When, as here, a judge engages in off-the-bench speech regarding a public issue that does not address a particular adjudicative proceeding or litigant appearing before the judge, that speech enjoys protection under the First Amendment and correlative provisions of the Wyoming Constitution. *See Republican Party of Minnesota v. White*, 536 U.S. 765, 777-78 (2002) (holding that a provision in a code of judicial conduct prohibiting candidates for judicial office from announcing their views on disputed legal or political issues violated the First Amendment). Consequently, the Commission's attempt to apply the Code here is subject to strict scrutiny. But this application of the Code does not further a compelling state interest and is not a narrowly tailored means of achieving a compelling state interest. Of particular note, Judge Neely has demonstrated many ways that the government can accommodate her religious convictions while still furthering its asserted interests. Therefore, strict-scrutiny analysis is not satisfied, and constitutional free-speech protections forbid the Commission from punishing or retaliating against Judge Neely for expressing her beliefs about marriage.

10. Having concluded that Judge Neely did not violate any provision of the Code, and having further concluded that the Code may not be interpreted or applied in the manner proposed by the

Commission because doing so would violate state and federal constitutional provisions guaranteeing the free exercise of religion, safeguarding freedom of expression, and forbidding religious tests for public office, the Panel need not and does not reach the following questions: (1) whether the Commission's proposed application of the Code would violate the Establishment Clause of the First Amendment to the U.S. Constitution and corresponding provisions of the Wyoming Constitution; (2) whether this proceeding violates Judge Neely's state or federal due-process rights or state separation-of-powers principles; or (3) whether the Code provisions at issue in this proceeding are unconstitutionally vague or overbroad.

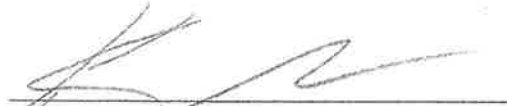
ORDER

After considering the written briefing, the evidence submitted by the parties, and the oral arguments presented by the parties' respective counsel, this Panel finds that there are no genuine issues of material fact as to any of the claims asserted in the Notice of Commencement of Formal Proceedings filed by the Commission on Judicial Conduct and Ethics, and that Judge Neely is entitled to summary judgment as a matter of law.

IT IS HEREBY ORDERED THAT Judge Neely's Motion for Summary Judgment is **GRANTED** in its entirety, the Commission's Motion for Partial Summary Judgment is **DENIED** in its entirety, and the Commission's Notice of Commencement of Formal Proceedings is **DISMISSED WITH PREJUDICE**.

SO ORDERED this _____ day of _____, 20__.

Dated: December 16, 2015



Kenneth J. Connelly*

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

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

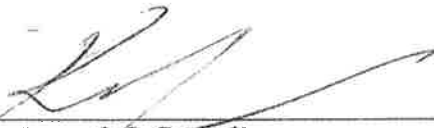
Attorneys for Respondent
**Out-of-State Certification Obtained*

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of December, 2015, I served the foregoing Proposed Findings of Fact and Conclusions of Law by electronic mail on the following:

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

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



Kenneth J. Connelly

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS

STATE OF WYOMING

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

COMMISSION ON JUDICIAL CONDUCT
AND ETHICS
No. 2014-27 Official Record
FILED
Date: 12/28/15
Wendy J. Soto

COMMISSION'S DESIGNATION OF WITNESSES AND EXHIBITS

COMES NOW the Commission on Judicial Conduct and Ethics, by and through its disciplinary counsel Patrick Dixon, and pursuant to the June 19, 2015 *Hearing Order* and *Order Granting Motion to Continue and Resetting Deadlines*, dated October 27, 2015, and hereby designates the following as witnesses and exhibits for use at the hearing on the matter, scheduled to commence on January 11, 2016:

A. The Commission will call the following as witnesses at the scheduled hearing:

1. Wendy Soto, Executive Director of the Commission on Judicial Conduct and Ethics, P.O. Box 2645, Cheyenne, Wyoming 82003, telephone (307) 778-7792. Ms. Soto will testify in accordance with her deposition. In addition to the subjects addressed in her deposition, she will testify with reference to relevant pleadings and deposition transcripts to Judge Neely's Response to the Notice of Commencement of Formal Proceedings. She will also testify with reference to Exhibit 20 to the expenses incurred by the Commission in the instant proceeding, including costs and attorney fees.

2. Ana Cuprill, 230 Spruce St., Pinedale, Wyoming, telephone (307) 413-7133. Ms. Cuprill will testify in accordance with her deposition.

3. Honorable Curt Haws, Circuit Court Judge, P.O. Box 1796, Pinedale, Wyoming 82941, telephone (307) 367-2556. Judge Haws will testify in accordance with his deposition and with respect to Exhibits 1-7, 15 and 18.

4. Ned Donovan, London, England, physical address unknown; email address NedDonovan1@gmail.com; telephone +44-7736-833-776. Mr. Donovan will appear by telephone conference call. Mr. Donovan will testify that he has dual citizenship in Great Britain and the U.S. and that until August, 2014 he was living in Pinedale and working as a reporter for the Pinedale Roundup and its related entities. Shortly after the decision came down in *Guzzo v. Mead*, Mr. Donovan heard that there was at least one same sex couple in the Pinedale area who wanted to be married but he also heard through the grapevine that Judge Neely had stated that she would not perform same sex marriages. Accordingly, around the 8th of December, 2014 he called Judge Neely and asked her if she was looking forward to performing same sex marriages. She responded in the negative and explained her position in opposition to gay marriages. Mr. Donovan will describe this portion of the conversation as a twenty minute "rant." He will testify that his reaction was that he was "blown away." Approximately an hour after the initial conversation Judge Neely called Mr. Donovan and asked him if she could retract her statements. Mr. Donovan will testify that he told her he would have to check and get back to her. He then called Jim Angel with the Wyoming Press

Association and his organization's editor Brian (last name unknown) and both advised him to go ahead with the story. Mr. Donovan will testify that he then called Judge Neely and had a third conversation in which he offered to hold the comments out if she would change her position with regard to performing same sex ceremonies. She told him that she would not do so and told him to publish what he wanted.

Mr. Donovan will testify that he then called Mayor Jones to round out the story and that Mayor Jones was very defensive of Judge Neely. He asked Mayor Jones if he was concerned about Judge Neely discriminating against gay litigants. Mayor Jones' response was until there was a problem he did not want to create one. Mr. Donovan kept notes of his conversation with Judge Neely which are marked as Exhibit 9. He will testify to those notes. He will testify that he accurately quoted Judge Neely in the December 11, 2014 Examiner article and that, in his opinion, Judge Neely knew what she was doing was not right from her perspective as a Circuit Court Magistrate and Municipal Judge.

Mr. Donovan will testify that he heard rumors that she declined to perform a same sex marriage on the grounds that she had problems with her schedule.

Mr. Donovan will testify to his farewell editorial which is identified as Exhibit 10.

5. Carl Oleson, 503 S. Beech, Casper, Wyoming 82601, telephone (307) 797-6884. Mr. Oleson is a resident of Casper, Wyoming and is employed

by Wheels and Wings on Oil Drive. Mr. Oleson will testify that he has a long affiliation with Wyoming Equality and has served on its Board of Directors. As such, Mr. Oleson is acquainted with Wendy Soto, Jeran Artery, and has a passing acquaintance with Ana Cuprill through the Democratic Party. Mr. Oleson will testify that he was one of the named Plaintiffs, together with his spouse, Rob Johnston, in the *Guzzo v. Mead* case. As such he will testify that he has long been a vocal proponent of LGBT rights and issues.

Mr. Oleson will testify that he became aware of the Sublette Examiner article shortly after its publication. His best recollection is that he saw it through a Wyoming Equality link. He will testify that Judge Neely's position with regard to same sex marriage was the subject of considerable internet discussion and caused considerable consternation among the LGBT community. He will testify to his own personal reaction. He will testify on the one hand that he was extremely disappointed by the Judge's position because they had been through a long fight to get to the point of marriage equality after the decision in *Guzzo* and now, here was a judge denying that same sex couples had the same rights to be married as any other citizen. He will testify that, on the other hand, he was not terribly surprised that a judge would make this type of statement because Wyoming is very much behind the national trends on these issues. Mr. Oleson may be asked to testify to his comfort level in appearing before a judge who has expressed such views regarding same sex marriage.

B. The Commission may call the following as witnesses:

1. Jeran Artery, New York Life, Airport Terminal, 300 E. 8th Ave., Cheyenne, Wyoming 82001, telephone (307) 772-8001 (307) 331-1345. Mr. Artery may testify live or by way of deposition and will testify in accordance with his deposition.

2. Steve Smith, 230 Spruce St., Pinedale, Wyoming, telephone 307-367-4577. Mr. Smith may testify live or by way of deposition and will testify in accordance with his deposition.

3. Julie Tiedeken, P.O. Box 748, Cheyenne, Wyoming 82003, telephone (307) 637-5575. Ms. Tiedeken may testify live or by way of deposition and will testify in accordance with her deposition.

C. Exhibits. The Commission will offer those exhibits identified in the Exhibit and Witness List attached hereto. The Commission reserves the right to offer any exhibit designated by Judge Neely, any exhibit identified in the course of any deposition taken in the proceeding and any exhibit attached to any motion or affidavit filed as a pleading. The Commission further reserves the right to offer appropriate rebuttal exhibits.

DATED this 28 day of December, 2015.

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

CERTIFICATE OF SERVICE

I, Patrick Dixon, do hereby certify that on the 28 day of December, 2015, I served the above and foregoing **Commission's Designation of Witnesses and Exhibits** via email or U.S. mail, postage prepaid, as noted below:

VIA EMAIL

dobylaw@embarqmail.com

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

VIA EMAIL kconnelly@adflegal.org

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

VIA EMAIL

orchard@spencelawyers.com

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

VIA U.S. MAIL

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


Patrick Dixon

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS

STATE OF WYOMING

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

No. 2014-27

EXHIBIT AND WITNESS LIST

PRESIDING JUDGE					PLAINTIFF'S ATTORNEY	DEFENDANT'S ATTORNEY
TRIAL DATE(S)					COURT REPORTER	COURTROOM DEPUTY
PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS* AND WITNESSES	
1					Order of Appointment 2006 (attached)	
2					Oath of Office 7/6/06 (attached)	
3					Order of Appointment 2007 (Depo Ex. 42)	
4					Oath of Office 6/4/07 (attached)	
5					Order Appointing Court Magistrate 2008 (attached)	
6					Bond on Oath of Office 9/15/08 (attached)	
7					Municipal Court forms (Depo Ex. 43)	
8					Sublette Examiner Article (Depo Ex. 4)	
9					Donovan Notes (attached)	
10					Donovan Editorials (to be provided)	
11					Email from Cuprill 12/22/14 (Depo Ex. 7)	
12					Email to Tiedeken 12/22/14 (Depo Ex. 8)	
13					Email to I Panel 12/22/14 (Depo Ex. 9)	
14					Letter to Neely and Haws 1/2/15 (Depo Ex. 11)	
15					Haws' Response 1/17/15 (Part of Depo Ex. 12)	
16					Neely's Response 2/7/15 (Depo Ex. 21)	
17					Referral to A-Panel 3/2/15 (Depo Ex. 14)	
18					Email to Justice Burke 12/11/14 (Depo Ex. 39)	
19					Letter to JEAC 1/6/15 (Depo Ex. 41)	
20					Summary of CJCE costs and fees (attached)	

*Include a notation as to the location of any exhibit not held with the case file or not available because of size.

IN THE CIRCUIT COURT OF THE 9TH JUDICIAL DISTRICT
SUBLETTE COUNTY, WYOMING
JOHN V. CROW, CIRCUIT COURT JUDGE

THE STATE OF WYOMING,)
) ss.
COUNTY OF SUBLETTE)

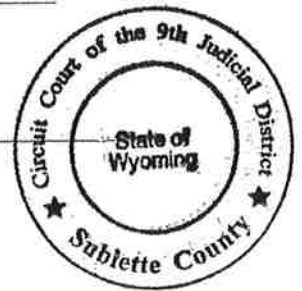
FILED
JUN 2 2006
Sublette Circuit Court
By *[Signature]*
CLERK

ORDER APPOINTING ADJUNCT COURT MAGISTRATE

IT IS HEREBY ORDERED that RUTH NEELY be and is hereby appointed Magistrate of the Circuit Court in and for Sublette County from July 1, 2006, and until June 30, 2007, for the limited purpose of performing weddings; and to serve without salary and shall take and subscribe an oath as provided by law to perform the duties provided by Sec. 5-9-212 (a)(iii).

DATED this 29th day of June, 2006.

[Signature]
JOHN V. CROW,
Circuit Court Judge



OATH OF OFFICE

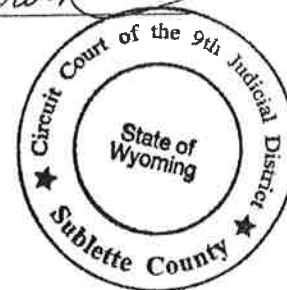
THE STATE OF WYOMING)
) ss
COUNTY OF SUBLETTE)

I, RUTH NEELY, having been appointed Circuit Court Magistrate for the Circuit Court of the 9th Judicial District, Sublette County, State of Wyoming, do solemnly swear that I will support, obey and defend the Constitution of this State, and that I will discharge the duties of my office with fidelity; that I have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my appointment, except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of the State, or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office, other than the compensation allowed by law.


RUTH NEELY

Subscribed in my presence and sworn to before me this 6 day of July,
2006.


Circuit Court Clerk



IN THE CIRCUIT COURT OF THE 9TH JUDICIAL DISTRICT
SUBLETTE COUNTY, WYOMING
CURT HAWS, CIRCUIT COURT JUDGE

THE STATE OF WYOMING,)
) ss.
COUNTY OF SUBLETTE)

FILED IN CIRCUIT COURT
9TH JUDICIAL DISTRICT
SUBLETTE COUNTY WYOMING

JUN - 4 2007

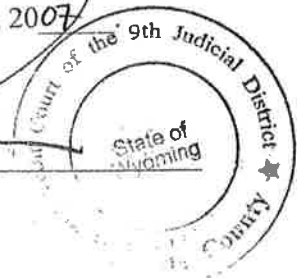
WENDY SELL
CLERK OF CIRCUIT COURT

ORDER APPOINTING ADJUNCT COURT MAGISTRATE

IT IS HEREBY ORDERED that RUTH NEELY be and is hereby appointed Adjunct Magistrate of the Circuit Court in and for Sublette County from July 1, 2007, and until June 30, 2008, for the limited purpose of performing weddings; and to serve without salary and shall take and subscribe an oath as provided by law to perform the duties provided by Sec. 5-9-212 (a)(iii).

DATED this 4 day of JUNE, 2007

CURT HAWS,
Circuit Court Judge



OATH OF OFFICE

FILED IN CIRCUIT COURT
9TH JUDICIAL DISTRICT
SUBLETTE COUNTY WYOMING

THE STATE OF WYOMING)
) ss
COUNTY OF SUBLETTE)

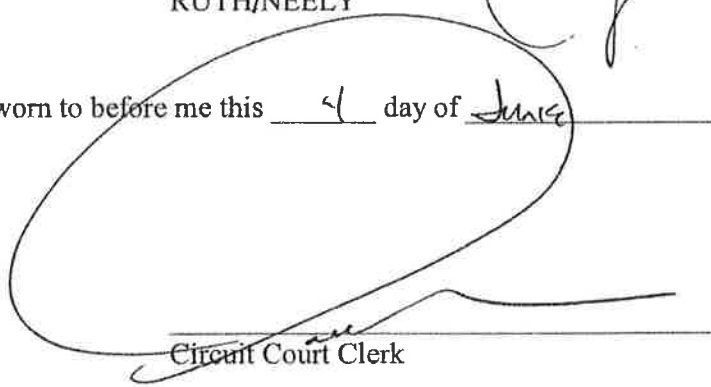
JUN - 4 2007

WENDY SELL
CLERK OF CIRCUIT COURT

I, RUTH NEELY, having been appointed Circuit Court Magistrate for the Circuit Court of the 9th Judicial District, Sublette County, State of Wyoming, do solemnly swear that I will support, obey and defend the Constitution of this State, and that I will discharge the duties of my office with fidelity; that I have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my appointment, except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of the State, or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office, other than the compensation allowed by law.


RUTH/NEELY

Subscribed in my presence and sworn to before me this 4 day of June
2006.


Circuit Court Clerk

**Circuit Court of the Ninth Judicial District
Sublette County, Wyoming**

Curt A. Haws
Circuit Court Judge

Wendy Sell
Clerk of Court



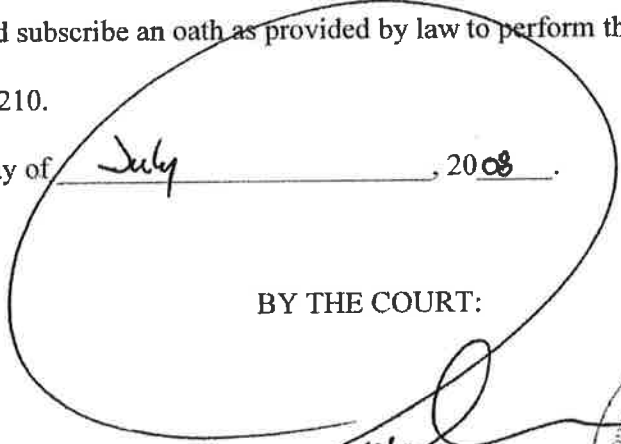
40 South Fremont
P.O. Box 1796
Pinedale, WY 82941
(307) 367-2556
(307) 367-2658 fax

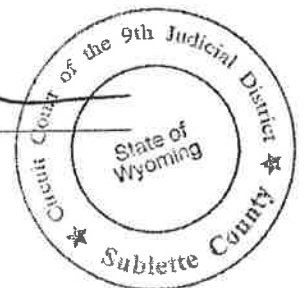
ORDER APPOINTING COURT MAGISTRATE

IT IS ORDERED that pursuant to W.S. § 5-9-201, et seq., **RUTH NEELY**, be, and is hereby appointed Magistrate of the Circuit Court in and for Sublette County, State of Wyoming, and shall take and subscribe an oath as provided by law to perform the duties provided by W.S. § 5-9-210.

DATED this 1st day of July, 2008.

BY THE COURT:


CURT HAWS
Circuit Court Judge



Wyoming



Western Surety Company

OFFICIAL BOND AND OATH

KNOW ALL PERSONS BY THESE PRESENTS:

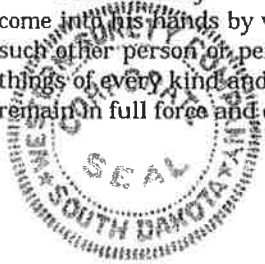
Bond No. 15185901

That we Ruth L. Neely
 of Pinedale, Wyoming, as Principal, and WESTERN SURETY COMPANY,
 a corporation duly licensed to do business in the State of Wyoming, as Surety, are held and firmly bound
 unto _____, the State of Wyoming, in the penal
 sum of One Thousand and 00/100 DOLLARS (\$ 1,000.00),
 to which payment well and truly to be made, we bind ourselves and our legal representatives, jointly and
 severally, firmly by these presents.

Dated this 18th day of August, 2008.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas, the above bounden
 Appointed WY Circuit Court of Sublette County
 Principal was duly Elected to the office of Magistrate
 in the County of Circuit Court of the Ninth Judicial District,
 and State aforesaid for the term beginning August 18th, 2008, and ending
August 18th, 2009.

NOW THEREFORE, If the above bounden Principal and his deputies shall faithfully, honestly and
 WY Circuit Court of Sublette County
 impartially perform all the duties of his said office of Magistrate
 as is or may be prescribed by law, and shall with all reasonable skill, diligence, good faith and honesty safely
 keep and be responsible for all funds coming into the hands of such officer by virtue of his office; and pay
 over without delay to the person or persons authorized by law to receive the same, all moneys which may
 come into his hands by virtue of his said office; and shall well and truly deliver to his successor in office, or
 such other person or persons as are authorized by law to receive the same, all moneys, books, papers and
 things of every kind and nature held by him as such officer, the above obligation shall be void, otherwise to
 remain in full force and effect.



FILED

SEP 15 2008

MARILYN M. JENSEN
 CLERK OF DISTRICT COURT
 PINEDALE, WYOMING
 BY M. Jensen

Ruth L. Neely
 Principal

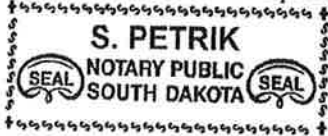
WESTERN SURETY COMPANY
 By Paul T. Bruflat
 Paul T. Bruflat, Senior Vice President

ACKNOWLEDGMENT OF SURETY
(Corporate Officer)

STATE OF SOUTH DAKOTA }
County of Minnehaha } ss

On this 18th day of August, 2008, before me, appeared

Paul T. Bruflat to me personally known, being by me sworn, and did say that he is the aforesaid officer of WESTERN SURETY COMPANY, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and said officer acknowledged said instrument to be the free act and deed of said corporation.



My Commission Expires August 11, 2010

S. Petrik

Notary Public

OATH OF OFFICE

THE STATE OF WYOMING }
County of Sublette } ss

I do solemnly swear or affirm that I will support, obey and defend the Constitution of the United States, and the Constitution of this State, and that I will discharge the duties of my office with fidelity; that I have not paid or contributed or promised to pay or contribute, either directly or indirectly, any money or other valuable thing, to procure my nomination or election (or appointment) except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of the State, or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office, other than the compensation allowed by law. So help me God.

Ruth L Neely

Principal

Subscribed and sworn to before me this 15 day of September, 2008

ACKNOWLEDGMENT OF PRINCIPAL

THE STATE OF WYOMING }
County of Sublette } ss

On this 15 day of September, 2008, before me, personally appeared

Ruth L Neely

, to me known to be the person described in and who executed the foregoing instrument as Principal, and acknowledged that the same was executed as

her

free act and deed.

My commission expires

2/3/10



Page 2 of 2

Wendy R Seel

Notary Public, Wyoming

Process

"The process is exactly the same. The process is go to the county clerk's office, and then the couple will call a judge and if the judge can do it

"Circuit court commissioners can preside over weddings."

"Steve Smith is a circuit court magistrate, and I think that he would do that."

Same sex marriages

Asked if she was looking forward to them: "I will not be able to do them."

"We have at least one magistrate who will do same-sex marriages but I will not be able to."

Asked if it was at judge's discretion: "I'm making it my discretion..."

"I don't want to come across as some old stick in the mud who don't do anything for anybody."

Trying to clarify position after realising she was digging a hole

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

"By me not being able to do that, it's not leaving anyone out cold. Because we have extra circuit court magistrates who will do those."

"Circuit court judges are required to do them."

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

"I may be digging myself a hole, I don't know."

"If because of my moral convictions, I can no longer do any weddings, then I can't do any weddings."

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

"All magistrates are required to perform weddings, and any couple regardless of gender, can call any magistrate and any judge and see if that judge can fit them into their personal schedules."

Call 20 minutes later, asked to retract all above quotes and replace with below:

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

"As the town judge, she does not perform marriages, that is not part of the description of the work of a town judge ... [Performing marriages] is something she took on herself years ago to try and ... provide more services to the town. In terms of whether she will do that as the town judge, which is what she is hired to do for us, it's kind of a non-player."

"If she does not feel comfortable performing a same-sex marriage, then that's her business and she's going to have to decide that. However, that will require her to resign her position as a magistrate, and if she wants to do that then that's completely up to her."

"As far as my feelings on it, I think it's irrelevant. I support Judge Neely, she has deep religious convictions, just like people have them on the other side and I'm not going to force any of my employees to do something they're not comfortable with."

Decision would go before Town Council, not a decision for mayor.

"Until we have a problem, I don't see any point in creating a problem."

Not aware of any requests made to Neely. If it was denied, they would bring it to the council and mayor would be happy to hear that case.

Indicated he was willing for it to come up in a meeting if a citizen wanted to.

"Even if she denied one, I'm not going to bring it up unless that person asks for it to be brought up."

Jones supported same-sex unions not same-sex marriage.

"If there's one person that I know that would swallow hard and do what the law said, it would be Ruth Neely."

Appointed by Jones, confirmed by Town Council

"I could not be more proud of Ruth Neely than I am. She is a very morally strong person and she has a right to her [private] beliefs. They do not [interfere with her job as municipal judge.]"

Jones didn't think her approach was unfair

"I will not in anyway try and force her to do something she is morally uncomfortable with."

"I want to be very clear I have all the faith in the world that if a case unrelated to this ... came before her, [and] that she did not think she could be morally fair, I have every, every, expectation, as well as I know her, that she would recuse herself before taking that case and enforcing her morals."

Selection Criteria

Acco.Transaction T Invoice; Transfer To Funds; Discount; Special Credit; Increase Invoice Details; Decrease Invoice
Details
Acco.Classification Open
Clie.Selection Include: CJCE 2-2015

'B' for Billed. 'P' for Posted.

ID	Date	Type Invoice #	Client Check Number	Total
5872	3/9/2015	INV G:16491 Invoice	B CJCE 2-2015	580.00
5898	4/10/2015	INV G:16498 Invoice	B CJCE 2-2015	652.39
5917	5/4/2015	INV G:16509 Invoice	B CJCE 2-2015	161.09
5928	6/2/2015	INV G:16516 Invoice	B CJCE 2-2015	50.00
5946	7/1/2015	INV G:16525 Invoice	B CJCE 2-2015	560.18
5957	8/18/2015	INV G:16533 Invoice	B CJCE 2-2015	2331.94
5973	9/15/2015	INV G:16542 Invoice	B CJCE 2-2015	4221.32
5993	10/9/2015	INV G:16559 Invoice	B CJCE 2-2015	13540.29
6015	11/10/2015	INV G:16573 Invoice	B CJCE 2-2015	4621.02
6037	12/7/2015	INV G:16586 Invoice	B CJCE 2-2015	5052.80

12/23/2015
1:12 PM

DIXON & DIXON, LLP
A/R Transaction Listing

<u>ID</u>	<u>Type</u>	<u>Client</u>	<u>Total</u>
<u>Date</u>	<u>Invoice #</u>	<u>Check Number</u>	
Grand Total			
Invoice			<u>31771.03</u>

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS
STATE OF WYOMING

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

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

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

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

PROCEDURAL HISTORY

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

JURISDICTION

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

STANDARD OF REVIEW

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

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

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

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

CONCLUSIONS OF LAW

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

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

ANALYSIS

A. Applicable sections of the Wyoming Code of Judicial Conduct

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

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

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

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

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

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

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

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

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

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

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

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

B. Constitutional Considerations

Free Exercise of Religion

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

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

Religious Test

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

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

Establishment Clause

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

Freedom of Expression/First Amendment

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

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

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

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

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

Due Process

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

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ORDER

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

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

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


Mel C. Orchard, III
Presiding Officer/Hearing Officer


Barbara H. Dilts
Hearing Officer


Hon. Wendy M. Bartlett
Hearing Officer

CERTIFICATE OF SERVICE

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

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

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

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



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

cc: Adjudicatory Panel

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS

STATE OF WYOMING

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

COMMISSION ON JUDICIAL CONDUCT
AND ETHICS

No. 2014-27 Official Record

FILED

Date: 1/15/16

Wendy J. Soto

COMMISSION'S MOTION TO SUPPLEMENT RECORD

COMES NOW the Commission on Judicial Conduct and Ethics, by and through its disciplinary counsel Patrick Dixon, and hereby moves the Adjudicatory Panel for leave to supplement the record with the Affidavit of Wendy J. Soto, together with the attachments thereto. Disciplinary Counsel requests that these materials be considered by the full Commission in determining the matter of sanctions, if any. At least with respect to the billing records, it appears that such materials are mandated by Rule 17 of the Rules Governing the Commission on Judicial Conduct and Ethics..

DATED this 15 day of January, 2016.

Patrick Dixon for:

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

CERTIFICATE OF SERVICE

I, Patrick Dixon, do hereby certify that on the 15 day of January, 2016, I served the above and foregoing **Commission's Motion to Supplement Record** via email or U.S. mail, postage prepaid, as noted below:

VIA EMAIL

dobylaw@embarqmail.com

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

VIA EMAIL kconnelly@adfllegal.org

James A. Campbell
Kenneth J. Connelly
Douglas G. Wardlow
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15100 N. 90th Street
Scottsdale, Arizona 85260

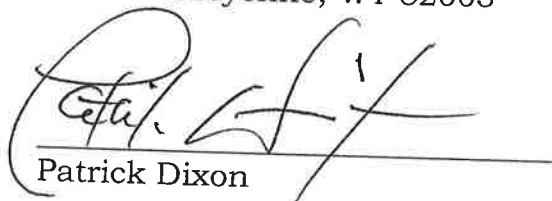
VIA EMAIL

orchard@spencelawyers.com

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

VIA U.S. MAIL

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


Patrick Dixon

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS

STATE OF WYOMING

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

COMMISSION ON JUDICIAL CONDUCT
AND ETHICS
No. 2014-27
Official Record
FILED
Date 11/15/16
Wendy J. Soto

AFFIDAVIT OF WENDY J. SOTO

STATE OF WYOMING)
) ss.
COUNTY OF LARAMIE)

I, Wendy J. Soto, a person of the age of majority, being sworn, depose and say as follows:

1. That I am the Executive Director of the Commission on Judicial Conduct and Ethics. I was hired as such on June 1, 2012 and have served in that capacity continuously to this date.

2. As Executive Director of the Commission, I have knowledge of the Own Motion Complaint and resulting Notice of Commencement of Formal Proceedings against Judge Ruth Neely. Subsequent to the initiation of the complaint, I was involved in appointing the respective Investigatory and Adjudicatory Panels and I have attended all meetings of both panels. I serve a dual role as clerk to the respective panels and, in certain instances, have

served as assistant to and paralegal for the Disciplinary Counsel. As such, I have firsthand knowledge of the matters set forth herein.

3. As can be seen from the summary of billing records of Dixon & Dixon, LLP, attached hereto as Exhibit 1 to this Affidavit, the Commission has incurred \$31,855.33 in attorney fees and \$4,417.29 in litigation expenses, the combined sum of \$36,272.62. The bulk of these costs have been incurred in defending depositions noticed by Judge Neely's counsel, responding to Judge Neely's motions and in advancing the Commission's motion for summary judgment.

4. In addition to the litigation costs, the Commission staff has expended an estimated 125 hours in dealing with the Own Motion Complaint against Judge Neely.

5. In addition to litigation costs and staff hours, volunteer members of the Commission have expended an estimated 90 hours in attending Investigatory Panel and Adjudicatory Panel meetings, and in the case of the Adjudicatory Panel, in resolving the cross motions for summary judgment.

6. To date, Judge Neely has failed to acknowledge any wrongdoing on her part and has failed to propose any type of voluntary resolution of the complaint.

7. It is my understanding, based upon pleadings of record, that Disciplinary Counsel has requested an evidentiary hearing on the matter of sanctions. If such a hearing was held, Disciplinary Counsel would offer evidence from witnesses Ned Donovan and Carl Oleson, to the effect as set

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forth in the Commission's Designation of Witnesses and Exhibits, attached hereto as Exhibit 2.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 15th day of January, 2016.


Wendy J. Soto

The foregoing **Affidavit of Wendy J. Soto** was subscribed and sworn to before me by Wendy J. Soto, this 15th day of January, 2016.
WITNESS MY HAND AND OFFICIAL SEAL.


Notary Public

My Commission Expires:

8/6/18



CERTIFICATE OF SERVICE

I, Patrick Dixon, do hereby certify that on the 15 day of January, 2016, I served the above and foregoing *Affidavit of Wendy J. Soto* by placing a true and correct copy in the United States mail, duly postmarked and addressed to:

VIA EMAIL dobylaw@embarqmail.com

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

VIA EMAIL kconnelly@adflegal.org

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

VIA orchard@spencelawyers.com

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

VIA U.S. MAIL

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


Patrick Dixon

EXHIBIT 1

AFFIDAVIT OF WENDY SOTO

An Inquiry Concerning the Honorable Ruth Neely
Before the Commission on Judicial Conduct and Ethics, State of Wyoming
Docket No. 2014-27

DATE	INVOICE NO.	FEEES	COSTS	TOTAL
3/3/15	Dixon 16491	580.00	0.00	580.00
4/10/15	Dixon 16498	650.00	2.39	652.39
5/4/15	Dixon 16509	160.00	1.09	161.09
6/2/15	Dixon 16516	50.00	0.00	50.00
7/1/15	Dixon 16525	550.00	10.18	560.18
8/18/15	Dixon 16533	2,310.00	21.94	2,331.94
9/15/15	Dixon 16542	4,207.50	13.82	4,221.32
10/9/15	Dixon 16559	11,208.33	2,331.96	13,540.29
11/10/15	Dixon 16573	3,205.00	1,416.02	4,621.02
12/7/15	Dixon 16586	5,017.00	35.80	5,052.80
12/14/15	Walz 3516	0.00	449.32	449.32
1/6/16	Dixon 16595	3,127.50	134.77	3,262.27
1/13/16	Dixon Pre-Bill	790.00	0.00	790.00
	TOTAL	\$31,855.33	\$4,417.29	\$36,272.62

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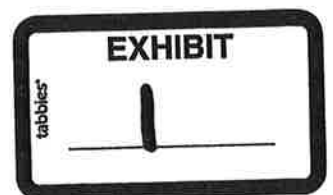


EXHIBIT 2

AFFIDAVIT OF WENDY SOTO

An Inquiry Concerning the Honorable Ruth Neely
Before the Commission on Judicial Conduct and Ethics, State of Wyoming
Docket No. 2014-27

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)

COMMISSION'S DESIGNATION OF WITNESSES AND EXHIBITS

COMES NOW the Commission on Judicial Conduct and Ethics, by and through its disciplinary counsel Patrick Dixon, and pursuant to the June 19, 2015 *Hearing Order* and *Order Granting Motion to Continue and Resetting Deadlines*, dated October 27, 2015, and hereby designates the following as witnesses and exhibits for use at the hearing on the matter, scheduled to commence on January 11, 2016:

A. The Commission will call the following as witnesses at the scheduled hearing:

1. Wendy Soto, Executive Director of the Commission on Judicial Conduct and Ethics, P.O. Box 2645, Cheyenne, Wyoming 82003, telephone (307) 778-7792. Ms. Soto will testify in accordance with her deposition. In addition to the subjects addressed in her deposition, she will testify with reference to relevant pleadings and deposition transcripts to Judge Neely's Response to the Notice of Commencement of Formal Proceedings. She will also testify with reference to Exhibit 20 to the expenses incurred by the Commission in the instant proceeding, including costs and attorney fees.



2. Ana Cuprill, 230 Spruce St., Pinedale, Wyoming, telephone (307) 413-7133. Ms. Cuprill will testify in accordance with her deposition.

3. Honorable Curt Haws, Circuit Court Judge, P.O. Box 1796, Pinedale, Wyoming 82941, telephone (307) 367-2556. Judge Haws will testify in accordance with his deposition and with respect to Exhibits 1-7, 15 and 18.

4. Ned Donovan, London, England, physical address unknown; email address NedDonovan1@gmail.com; telephone +44-7736-833-776. Mr. Donovan will appear by telephone conference call. Mr. Donovan will testify that he has dual citizenship in Great Britain and the U.S. and that until August, 2014 he was living in Pinedale and working as a reporter for the Pinedale Roundup and its related entities. Shortly after the decision came down in *Guzzo v. Mead*, Mr. Donovan heard that there was at least one same sex couple in the Pinedale area who wanted to be married but he also heard through the grapevine that Judge Neely had stated that she would not perform same sex marriages. Accordingly, around the 8th of December, 2014 he called Judge Neely and asked her if she was looking forward to performing same sex marriages. She responded in the negative and explained her position in opposition to gay marriages. Mr. Donovan will describe this portion of the conversation as a twenty minute "rant." He will testify that his reaction was that he was "blown away." Approximately an hour after the initial conversation Judge Neely called Mr. Donovan and asked him if she could retract her statements. Mr. Donovan will testify that he told her he would have to check and get back to her. He then called Jim Angel with the Wyoming Press

Association and his organization's editor Brian (last name unknown) and both advised him to go ahead with the story. Mr. Donovan will testify that he then called Judge Neely and had a third conversation in which he offered to hold the comments out if she would change her position with regard to performing same sex ceremonies. She told him that she would not do so and told him to publish what he wanted.

Mr. Donovan will testify that he then called Mayor Jones to round out the story and that Mayor Jones was very defensive of Judge Neely. He asked Mayor Jones if he was concerned about Judge Neely discriminating against gay litigants. Mayor Jones' response was until there was a problem he did not want to create one. Mr. Donovan kept notes of his conversation with Judge Neely which are marked as Exhibit 9. He will testify to those notes. He will testify that he accurately quoted Judge Neely in the December 11, 2014 Examiner article and that, in his opinion, Judge Neely knew what she was doing was not right from her perspective as a Circuit Court Magistrate and Municipal Judge.

Mr. Donovan will testify that he heard rumors that she declined to perform a same sex marriage on the grounds that she had problems with her schedule.

Mr. Donovan will testify to his farewell editorial which is identified as Exhibit 10.

5. Carl Oleson, 503 S. Beech, Casper, Wyoming 82601, telephone (307) 797-6884. Mr. Oleson is a resident of Casper, Wyoming and is employed

by Wheels and Wings on Oil Drive. Mr. Oleson will testify that he has a long affiliation with Wyoming Equality and has served on its Board of Directors. As such, Mr. Oleson is acquainted with Wendy Soto, Jeran Artery, and has a passing acquaintance with Ana Cuprill through the Democratic Party. Mr. Oleson will testify that he was one of the named Plaintiffs, together with his spouse, Rob Johnston, in the *Guzzo v. Mead* case. As such he will testify that he has long been a vocal proponent of LGBT rights and issues.

Mr. Oleson will testify that he became aware of the Sublette Examiner article shortly after its publication. His best recollection is that he saw it through a Wyoming Equality link. He will testify that Judge Neely's position with regard to same sex marriage was the subject of considerable internet discussion and caused considerable consternation among the LGBT community. He will testify to his own personal reaction. He will testify on the one hand that he was extremely disappointed by the Judge's position because they had been through a long fight to get to the point of marriage equality after the decision in *Guzzo* and now, here was a judge denying that same sex couples had the same rights to be married as any other citizen. He will testify that, on the other hand, he was not terribly surprised that a judge would make this type of statement because Wyoming is very much behind the national trends on these issues. Mr. Oleson may be asked to testify to his comfort level in appearing before a judge who has expressed such views regarding same sex marriage.

B. The Commission may call the following as witnesses:

1. Jeran Artery, New York Life, Airport Terminal, 300 E. 8th Ave., Cheyenne, Wyoming 82001, telephone (307) 772-8001 (307) 331-1345. Mr. Artery may testify live or by way of deposition and will testify in accordance with his deposition.

2. Steve Smith, 230 Spruce St., Pinedale, Wyoming, telephone 307-367-4577. Mr. Smith may testify live or by way of deposition and will testify in accordance with his deposition.

3. Julie Tiedeken, P.O. Box 748, Cheyenne, Wyoming 82003, telephone (307) 637-5575. Ms. Tiedeken may testify live or by way of deposition and will testify in accordance with her deposition.

C. Exhibits. The Commission will offer those exhibits identified in the Exhibit and Witness List attached hereto. The Commission reserves the right to offer any exhibit designated by Judge Neely, any exhibit identified in the course of any deposition taken in the proceeding and any exhibit attached to any motion or affidavit filed as a pleading. The Commission further reserves the right to offer appropriate rebuttal exhibits.

DATED this 28 day of December, 2015.

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

CERTIFICATE OF SERVICE

I, Patrick Dixon, do hereby certify that on the 18 day of December, 2015, I served the above and foregoing **Commission's Designation of Witnesses and Exhibits** via email or U.S. mail, postage prepaid, as noted below:

VIA EMAIL

dobylaw@embarqmail.com

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

VIA EMAIL kconnelly@adflegal.org

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


VIA EMAIL

orchard@spencelawyers.com

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

VIA U.S. MAIL

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


Patrick Dixon

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS

STATE OF WYOMING

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

)
)
)
)
)
)

No. 2014-27

EXHIBIT AND WITNESS LIST

PRESIDING JUDGE					PLAINTIFF'S ATTORNEY	DEFENDANT'S ATTORNEY
TRIAL DATE(S)					COURT REPORTER	COURTROOM DEPUTY
PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS* AND WITNESSES	
1					Order of Appointment 2006 (attached)	
2					Oath of Office 7/6/06 (attached)	
3					Order of Appointment 2007 (Depo Ex. 42)	
4					Oath of Office 6/4/07 (attached)	
5					Order Appointing Court Magistrate 2008 (attached)	
6					Bond on Oath of Office 9/15/08 (attached)	
7					Municipal Court forms (Depo Ex. 43)	
8					Sublette Examiner Article (Depo Ex. 4)	
9					Donovan Notes (attached)	
10					Donovan Editorials (to be provided)	
11					Email from Cupriil 12/22/14 (Depo Ex. 7)	
12					Email to Tiedeken 12/22/14 (Depo Ex. 8)	
13					Email to I Panel 12/22/14 (Depo Ex. 9)	
14					Letter to Neely and Haws 1/2/15 (Depo Ex. 11)	
15					Haws' Response 1/17/15 (Part of Depo Ex. 12)	
16					Neely's Response 2/7/15 (Depo Ex. 21)	
17					Referral to A-Panel 3/2/15 (Depo Ex. 14)	
18					Email to Justice Burke 12/11/14 (Depo Ex. 39)	
19					Letter to JEAC 1/6/15 (Depo Ex. 41)	
20					Summary of CJCE costs and fees (attached)	

*Include a notation as to the location of any exhibit not held with the case file or not available because of size.

IN THE CIRCUIT COURT OF THE 9TH JUDICIAL DISTRICT
SUBLETTE COUNTY, WYOMING
JOHN V. CROW, CIRCUIT COURT JUDGE


THE STATE OF WYOMING,)
) ss.
COUNTY OF SUBLETTE)

FILED
JUN 28 2006
Sublette Circuit Court
By _____
CLERK

ORDER APPOINTING ADJUNCT COURT MAGISTRATE

IT IS HEREBY ORDERED that RUTH NEELY be and is hereby appointed Magistrate of the Circuit Court in and for Sublette County from July 1, 2006, and until June 30, 2007, for the limited purpose of performing weddings; and to serve without salary and shall take and subscribe an oath as provided by law to perform the duties provided by Sec. 5-9-212 (a)(iii).

DATED this 29th day of June, 2006.


JOHN V. CROW,
Circuit Court Judge



IN THE CIRCUIT COURT OF THE 9TH JUDICIAL DISTRICT
SUBLETTE COUNTY, WYOMING
CURT HAWS, CIRCUIT COURT JUDGE

THE STATE OF WYOMING,)
) ss.
COUNTY OF SUBLETTE)

FILED IN CIRCUIT COURT
9TH JUDICIAL DISTRICT
SUBLETTE COUNTY WYOMING

JUN - 4 2007

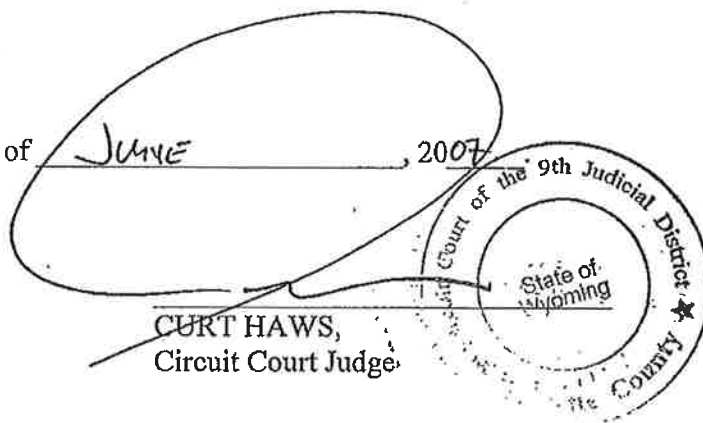
WENDY SELL
CLERK OF CIRCUIT COURT

ORDER APPOINTING ADJUNCT COURT MAGISTRATE

IT IS HEREBY ORDERED that RUTH NEELY be and is hereby appointed Adjunct Magistrate of the Circuit Court in and for Sublette County from July 1, 2007, and until June 30, 2008, for the limited purpose of performing weddings; and to serve without salary and shall take and subscribe an oath as provided by law to perform the duties provided by Sec. 5-9-212 (a)(iii).

DATED this 4 day of JUNE, 2007

CURT HAWS,
Circuit Court Judge



OATH OF OFFICE

FILED IN CIRCUIT COURT
9TH JUDICIAL DISTRICT
SUBLETTE COUNTY WYOMING

THE STATE OF WYOMING)
) ss
COUNTY OF SUBLETTE)

JUN - 4 2007

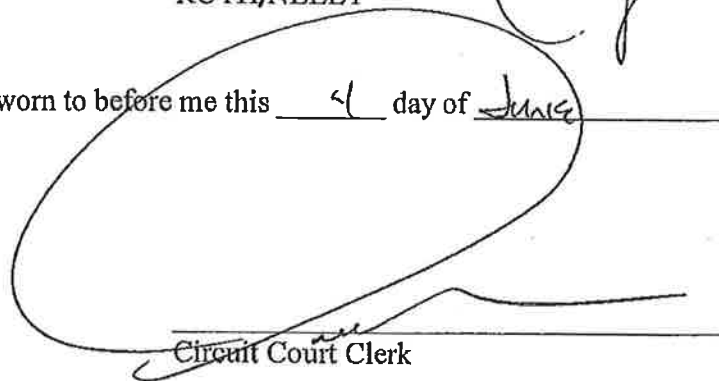
WENDY SELL
CLERK OF CIRCUIT COURT

I, RUTH NEELY, having been appointed Circuit Court Magistrate for the Circuit Court of the 9th Judicial District, Sublette County, State of Wyoming, do solemnly swear that I will support, obey and defend the Constitution of this State, and that I will discharge the duties of my office with fidelity; that I have not paid or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my appointment, except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of the State, or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office, other than the compensation allowed by law.



RUTH/NEELY

Subscribed in my presence and sworn to before me this 4 day of June 2006.



Circuit Court Clerk

**Circuit Court of the Ninth Judicial District
Sublette County, Wyoming**

Curt A. Haws
Circuit Court Judge

Wendy Sell
Clerk of Court



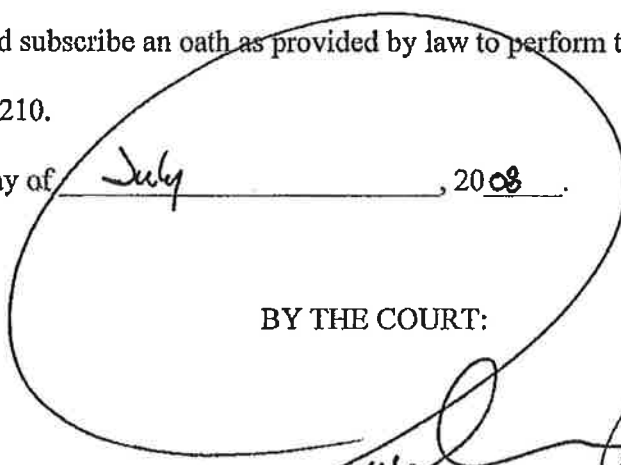
40 South Fremont
P.O. Box 1796
Pinedale, WY 82941
(307) 367-2556
(307) 367-2658 fax

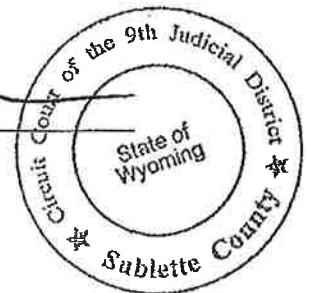
ORDER APPOINTING COURT MAGISTRATE

IT IS ORDERED that pursuant to W.S. § 5-9-201, et seq., **RUTH NEELY**, be, and is hereby appointed Magistrate of the Circuit Court in and for Sublette County, State of Wyoming, and shall take and subscribe an oath as provided by law to perform the duties provided by W.S. § 5-9-210.

DATED this 1st day of July, 2008.

BY THE COURT:


CURT HAWS
Circuit Court Judge



Wyoming



Western Surety Company

OFFICIAL BOND AND OATH

KNOW ALL PERSONS BY THESE PRESENTS:

Bond No. 15185901

That we Ruth L. Neely

of Pinedale, Wyoming, as Principal, and WESTERN SURETY COMPANY, a corporation duly licensed to do business in the State of Wyoming, as Surety, are held and firmly bound

unto _____, the State of Wyoming, in the penal

sum of One Thousand and 00/100 DOLLARS (\$ 1,000.00), to which payment well and truly to be made, we bind ourselves and our legal representatives, jointly and severally, firmly by these presents.

Dated this 18th day of August, 2008.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That whereas, the above bounden
Appointed WY Circuit Court of Sublette County
Principal was duly Elected to the office of Magistrate

in the County of Circuit Court of the Ninth Judicial District

and State aforesaid for the term beginning August 18th, 2008, and ending
August 18th, 2009.

NOW THEREFORE, If the above bounden Principal and his deputies shall faithfully, honestly and impartially perform all the duties of his said office of Magistrate WY Circuit Court of Sublette County as is or may be prescribed by law, and shall with all reasonable skill, diligence, good faith and honesty safely keep and be responsible for all funds coming into the hands of such officer by virtue of his office; and pay over without delay to the person or persons authorized by law to receive the same, all moneys which may come into his hands by virtue of his said office; and shall well and truly deliver to his successor in office, or such other person or persons as are authorized by law to receive the same, all moneys, books, papers and things of every kind and nature held by him as such officer, the above obligation shall be void, otherwise to remain in full force and effect.



FILED

SEP 15 2008

MARILYN M. JENSEN
CLERK OF DISTRICT COURT
PINEDALE WYOMING
BY [Signature]

[Signature: Ruth L. Neely]
Principal

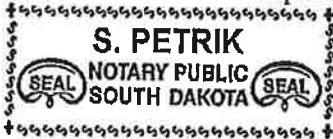
WESTERN SURETY COMPANY
By [Signature: Paul T. Bruffat]
Paul T. Bruffat, Senior Vice President

ACKNOWLEDGMENT OF SURETY
(Corporate Officer)

STATE OF SOUTH DAKOTA }
County of Minnehaha } ss

On this 18th day of August, 2008, before me, appeared

Paul T. Bruflat to me personally known, being by me sworn, and did say that he is the aforesaid officer of WESTERN SURETY COMPANY, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and said officer acknowledged said instrument to be the free act and deed of said corporation.



My Commission Expires August 11, 2010

S. Petrik
Notary Public

OATH OF OFFICE

THE STATE OF WYOMING }
County of Sublette } ss

I do solemnly swear or affirm that I will support, obey and defend the Constitution of the United States, and the Constitution of this State, and that I will discharge the duties of my office with fidelity; that I have not paid or contributed or promised to pay or contribute, either directly or indirectly, any money or other valuable thing, to procure my nomination or election (or appointment) except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of the State, or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office, other than the compensation allowed by law. So help me God.

Ruth L Neely
Principal

Subscribed and sworn to before me this 15 day of September, 2008

ACKNOWLEDGMENT OF PRINCIPAL

THE STATE OF WYOMING }
County of Sublette } ss

On this 15 day of September, 2008, before me, personally appeared

Ruth L Neely, to me known to be the person described in and who executed the foregoing instrument as Principal, and acknowledged that the same was executed as her free act and deed.

My commission expires



Wendy R Sell
Notary Public, Wyoming

Process

"The process is exactly the same. The process is go to the county clerk's office, and then the couple will call a judge and if the judge can do it

"Circuit court commissioners can preside over weddings."

"Steve Smith is a circuit court magistrate, and I think that he would do that."

Same sex marriages

Asked if she was looking forward to them: "I will not be able to do them."

"We have at least one magistrate who will do same-sex marriages but I will not be able to."

Asked if it was at judge's discretion: "I'm making it my discretion..."

"I don't want to come across as some old stick in the mud who don't do anything for anybody."

Trying to clarify position after realising she was digging a hole

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

"By me not being able to do that, it's not leaving anyone out cold. Because we have extra circuit court magistrates who will do those."

"Circuit court judges are required to do them."

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

"I may be digging myself a hole, I don't know."

"If because of my moral convictions, I can no longer do any weddings, then I can't do any weddings."

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

"All magistrates are required to perform weddings, and any couple regardless of gender, can call any magistrate and any judge and see if that judge can fit them into their personal schedules."

Call 20 minutes later, asked to retract all above quotes and replace with below:

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

"As the town judge, she does not perform marriages, that is not part of the description of the work of a town judge ... [Performing marriages] is something she took on herself years ago to try and ... provide more services to the town. In terms of whether she will do that as the town judge, which is what she is hired to do for us, it's kind of a non-player."

"If she does not feel comfortable performing a same-sex marriage, then that's her business and she's going to have to decide that. However, that will require her to resign her position as a magistrate, and if she wants to do that then that's completely up to her."

"As far as my feelings on it, I think it's irrelevant. I support Judge Neely, she has deep religious convictions, just like people have them on the other side and I'm not going to force any of my employees to do something they're not comfortable with."

Decision would go before Town Council, not a decision for mayor.

"Until we have a problem, I don't see any point in creating a problem."

Not aware of any requests made to Neely. If it was denied, they would bring it to the council and mayor would be happy to hear that case.

Indicated he was willing for it to come up in a meeting if a citizen wanted to.

"Even if she denied one, I'm not going to bring it up unless that person asks for it to be brought up."

Jones supported same-sex unions not same-sex marriage.

"If there's one person that I know that would swallow hard and do what the law said, it would be Ruth Neely."

Appointed by Jones, confirmed by Town Council

"I could not be more proud of Ruth Neely than I am. She is a very morally strong person and she has a right to her [private] beliefs. They do not [interfere with her job as municipal judge.]"

Jones didn't think her approach was unfair

"I will not in anyway try and force her to do something she is morally uncomfortable with."

"I want to be very clear I have all the faith in the world that if a case unrelated to this ... came before her, [and] that she did not think she could be morally fair, I have every, every, expectation, as well as I know her, that she would recuse herself before taking that case and enforcing her morals."

Selection Criteria

Acco.Transaction T Invoice; Transfer To Funds; Discount; Special Credit; Increase Invoice Details; Decrease Invoice
Details
Acco.Classification Open
Cfie.Selection Include: CJCE 2-2015

'B' for Billed. 'P' for Posted.

ID	Date	Type Invoice #	Client Check Number	Total
5872	3/9/2015	INV G:16491 Invoice	B CJCE 2-2015	580.00
5898	4/10/2015	INV G:16498 Invoice	B CJCE 2-2015	652.39
5917	5/4/2015	INV G:16509 Invoice	B CJCE 2-2015	161.09
5928	6/2/2015	INV G:16516 Invoice	B CJCE 2-2015	50.00
5946	7/1/2015	INV G:16525 Invoice	B CJCE 2-2015	560.18
5957	8/18/2015	INV G:16533 Invoice	B CJCE 2-2015	2331.94
5973	9/15/2015	INV G:16542 Invoice	B CJCE 2-2015	4221.32
5993	10/9/2015	INV G:16559 Invoice	B CJCE 2-2015	13540.29
6015	11/10/2015	INV G:16573 Invoice	B CJCE 2-2015	4621.02
6037	12/7/2015	INV G:16586 Invoice	B CJCE 2-2015	5052.80

12/23/2015
1:12 PM

DIXON & DIXON, LLP
A/R Transaction Listing

<u>ID</u>	<u>Type</u>	<u>Client</u>	<u>Total</u>
<u>Date</u>	<u>Invoice #</u>	<u>Check Number</u>	
Grand Total			
Invoice			<u>31771.03</u>

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

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

**COMMISSION ON JUDICIAL CONDUCT
AND ETHICS**

No. 2014-27

Official Record

FILED

Date: 1/19/16

Wendy J. Soto

**THE HONORABLE RUTH NEELY'S RESPONSE TO THE COMMISSION'S MOTION
TO SUPPLEMENT RECORD**

On January 15, 2016, the Commission on Judicial Conduct and Ethics (the "Commission") filed with the Adjudicatory Panel a Motion to Supplement Record, which included the Affidavit of its Executive Director Wendy J. Soto along with two exhibits: (1) a document summarizing fees and costs submitted by Disciplinary Counsel (Exhibit 1 to Ms. Soto's Affidavit); and (2) the Commission's previously filed Designation of Witnesses and Exhibits (Exhibit 2 to Ms. Soto's Affidavit). The Commission seeks to submit those materials only for the purpose of "be[ing] considered by the full Commission in determining the matter of sanctions." Motion at 1. Judge Neely respectfully submits the following response.

- I. The Adjudicatory Panel should strike Paragraph 7 of Ms. Soto's Affidavit, and the full Commission should disregard the Commission's Designation of Witnesses and Exhibits (Exhibit 2 to Ms. Soto's Affidavit).**

Paragraph 7 of Ms. Soto's Affidavit asserts that "Disciplinary Counsel has requested an evidentiary hearing on the matter of sanctions," and that "[i]f such a hearing [were] held, Disciplinary Counsel would [have] offer[ed] evidence from witnesses Ned Donovan and Carl

Oleson, to the effect as set forth in the Commission's Designation of Witnesses and Exhibits, attached . . . as Exhibit 2." Disciplinary Counsel now requests that the full Commission, in determining the issue of sanctions, should consider what Disciplinary Counsel claims that he might have been able to show if a hearing were held. This would be improper for a number of reasons.

First, the Adjudicatory Panel has already established, in its Order Granting Commission's Motion for Partial Summary Judgment, that it does not want to hear—and that the full Commission does not need to review—the evidence that might have been submitted at a hearing on sanctions. *See* Order at 8 (“[S]ufficient evidence exists to determine appropriate discipline without further hearing in this matter.”). Therefore, the Adjudicatory Panel has already rejected Disciplinary Counsel's request for the full Commission, when addressing the sanctions issue, to consider the contents of the Commission's Designation of Witnesses and Exhibits. The Adjudicatory Panel should summarily dismiss Disciplinary Counsel's attempt to make an end-run around that prior ruling.

Second, it would be improper and prejudicial for the full Commission to consider Disciplinary Counsel's speculation about what people like Mr. Donovan and Mr. Oleson would have testified had there been a hearing on sanctions. Nothing in the Designation of Witnesses and Exhibits (or the exhibits attached thereto) constitutes admissible evidence. *See* Rules Governing the Commission, Rule 9(a)-(b) (incorporating the summary-judgment rule and the Wyoming Rules of Evidence). Indeed, all of Disciplinary Counsel's assertions about what Mr. Donovan and Mr. Oleson might have testified are not only conjecture, they are also inadmissible hearsay. *See* Wyo. R. Evid. 802 (“Hearsay is not admissible . . .”). And Judge Neely has not had

the opportunity to test through questioning and cross-examination, or to counter with arguments or evidence, whatever those witnesses might have said at a hearing.

Third, Disciplinary Counsel has made no attempt to demonstrate how he thinks the testimony of Mr. Donovan and Mr. Oleson might be relevant to the sanctions determination. Nor has he shown that he was unable to introduce evidence from Mr. Donovan or Mr. Oleson earlier in this proceeding. In fact, it appears that Disciplinary Counsel is trying to introduce materials that are not focused on the sanctions issue and that he had an opportunity to submit earlier in the case. But the time to present the testimony of Mr. Donovan and Mr. Oleson, and to have it properly tested and countered by Judge Neely, has long passed.

For these reasons, the Adjudicatory Panel should reject Disciplinary Counsel's request for the full Commission to consider his speculation about what Mr. Donovan and Mr. Oleson might have testified if a hearing were held in this case.

II. The full Commission should disregard Paragraph 6 of Ms. Soto's Affidavit because it is incomplete and misleading.

Paragraph 6 of Ms. Soto's Affidavit avers that Judge Neely "has failed to acknowledge any wrongdoing on her part and has failed to propose any type of voluntary resolution of the complaint." But Ms. Soto's characterization of what Judge Neely has (or has not) acknowledged or proposed during this proceeding is incomplete and misleading. The full Commission should thus disregard it.

The Commission faults Judge Neely for defending herself or, in Ms. Soto's words, for "fail[ing] to acknowledge any wrongdoing" under the Wyoming Code of Judicial Conduct (the "Code"). But the Commission has previously admitted that "there is no guiding judicial precedence [sic] on th[e] exact question" raised in this case. Commission's Mem. in Supp. of Mot. for Partial Summ. J. at 10. It is thus bizarre and unfair for the Commission to insist that

Judge Neely's decision to defend herself and seek clarity on an admittedly unsettled question of law should somehow increase the sanctions assessed against her. This line of reasoning strikes at the very heart of Judge Neely's due-process rights, for it suggests that by exercising those rights she has brought greater punishment on herself. No legal authority supports that conclusion.

Furthermore, Ms. Soto's claim that Judge Neely "has failed to propose any type of voluntary resolution" is misleading. Around the time that the Commission served its Notice of Commencement of Formal Proceedings on Judge Neely, Disciplinary Counsel proffered an exceedingly unreasonable settlement offer that would have required Judge Neely to resign both of her judicial positions, agree never again to seek judicial office in Wyoming, admit wrongdoing, and agree to the release of a public statement stating that a complaint of judicial misconduct had been lodged against her and that in response to it she had decided to resign. In light of that initial offer, it is no wonder that Judge Neely did not subsequently propose any type of voluntary resolution. It is thus disingenuous for Disciplinary Counsel to suggest that Judge Neely should face more severe sanctions because she did not resume settlement negotiations that began with such one-sided terms.

III. The Adjudicatory Panel may accept, and the full Commission may consider, the document listing fees and costs submitted by Disciplinary Counsel (Exhibit 1 to Ms. Soto's Affidavit).

Rule 17 of the Rules Governing the Commission provides, in part, that "[i]n all proceedings resulting in a recommendation to the Wyoming Supreme Court for discipline, the Commission shall . . . make written findings of fact and conclusions of law[,] . . . includ[ing] a finding as to costs or fees incurred or paid by the Commission in connection with any proceedings concerning a judge." Accordingly, Judge Neely does not object to Disciplinary Counsel's request to supplement the record with the materials submitted as Exhibit 1 to Ms.

Soto's Affidavit, which relate to the Commission's fees and costs in this matter. Nevertheless, Judge Neely contends that the proffered evidence is insufficient to support a finding of the costs or fees incurred or paid by the Commission in connection with this proceeding.

Moreover, Judge Neely objects to any attempt to impose fees or costs upon her as a result of this matter.¹ As an initial matter, the Commission's rules do not expressly provide for the assessment of costs or fees against a judge. Rule 17 states that the Commission "shall include a finding as to fees and costs incurred or paid by the Commission" in any recommendation it makes, and Rule 18 provides that such a finding be "itemiz[ed]." Neither rule states that fees or costs "shall" or "should" be assessed against the judge. This omission is notable because when legislatures and courts intend one party to pay another party's costs or fees, they adopt rules that expressly say so. *See, e.g.*, Wyo. Stat. § 40-19-119 (providing in the consumer rental context that a merchant who fails to comply with the law will be liable for "actual damages . . . plus the costs of the action and reasonable attorney's fees") (emphasis added).

Furthermore, assessment of costs or fees would be improper in this context for at least two reasons. First, in its Notice of Commencement of Formal Proceedings, the Commission did not plead any intention to seek fees or costs as part of this proceeding. The Wyoming Supreme Court has made it clear in almost identical circumstances that "before costs may be assessed against an [individual] in a disciplinary proceeding, that [individual] must be given notice of the [government's] intention to seek those costs" at the outset of the proceeding. *Bd. of Prof'l Responsibility, Wyoming State Bar v. Stinson*, 2014 WY 134, ¶ 80, 337 P.3d 401, 424-25 (Wyo. 2014). "Fundamental fairness demands that sufficient notice of charges and their consequences

¹ Judge Neely reserves the right to further object to and contest any claim that she is responsible to pay for the Commission's costs or fees in this matter, including the right to raise additional arguments not proffered here.

must be provided to enable [an individual] to make meaningful choices with the respect to the need for, and the manner of, [her] defense without being subjected to any element of surprise.” *Meyer v. Norman*, 780 P.2d 283, 290 (Wyo. 1989). The failure of the Commission to plead fees or costs in its Notice of Commencement of Formal Proceedings is fatal to any attempt it might now make to assess fees or costs against Judge Neely.

Second, the equitable considerations presented here weigh against any attempted assessment of fees or costs against Judge Neely. This matter was initiated by the Commission on its own motion, absent the filing of a formal complaint by a member of the public. And the Commission seeks to punish Judge Neely—who has an unblemished record of judicial service, integrity, and fairness—without any “guiding judicial precedence [sic] on th[e] exact question” presented by this case. Commission’s Mem. in Supp. of Mot. for Partial Summ. J. at 10. It hardly seems fair that the government should saddle Judge Neely with fees or costs for exercising her due-process right to defend herself under circumstances that, as the Commission admits, raise novel and difficult questions of constitutional law. *See* Transcript of Hearing Proceedings at 73 (Disciplinary Counsel acknowledged that “[t]he questions on the code of ethics, constitutional questions, these are hard questions”).

Conclusion

For the foregoing reasons, Judge Neely respectfully requests that the Adjudicatory Panel deny the Commission’s Motion to Supplement Record (except that the Adjudicatory Panel may accept and the full Commission may consider the document submitted as Exhibit 1 to Ms. Soto’s Affidavit).

Dated: January 19, 2016



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**Out-of-State Certification Obtained*

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of January, 2016, I served the foregoing Response by electronic mail on the following:

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