

**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)	

**STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF THE
HONORABLE RUTH NEELY’S MOTION FOR SUMMARY JUDGMENT**

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

Judge Neely’s Public Service

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

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

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

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

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

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

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

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

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

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

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

Judge Neely's Religious Beliefs and Practice

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

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

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

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

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

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

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

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

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

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

Pinedale Roundup Reporter Ned Donovan's Inquiry

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

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

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

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

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

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

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

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

Same-Sex Marriages in Pinedale and Sublette County

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

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

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

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

Ned Donovan’s Articles

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

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

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

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

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

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

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

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

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

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

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

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

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

The Commission Investigation Commences

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

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

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

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

Judge Neely Seeks Official Guidance

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

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

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

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

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

The Investigatory Panel Decides to Bring Formal Proceedings Against Judge Neely

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

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

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

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

The Commission Files its Formal Notice

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

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

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

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

The Commission Files An Amended Formal Notice

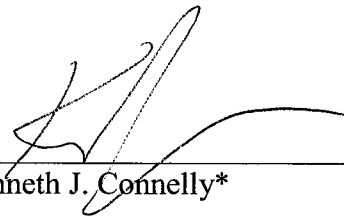
On August 28, 2015, the Commission filed an Amended Notice of Commencement of Formal Proceedings. Amended Notice of Commencement of Formal Proceedings (Connelly Aff., Ex. 36) (hereinafter "Amended Notice"). In that Amended Notice, the Commission alleged that Judge Neely, by hiring counsel from Alliance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

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

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

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

Dated: October 30, 2015



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**Out-of-State Certification Obtained*