

**IN THE SUPREME COURT  
STATE OF WYOMING**

An Inquiry Concerning the Honorable Ruth  
Neely, Municipal Court Judge and Circuit  
Court Magistrate, Ninth Judicial District,  
Pinedale, Sublette County, Wyoming

Judge Ruth Neely  
Petitioner,

v.

Wyoming Commission on Judicial Conduct  
and Ethics  
Respondent.

No. J-16-0001

IN THE SUPREME COURT  
STATE OF WYOMING  
FILED

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CAROL THOMPSON, CLERK  
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by CHIEF DEPUTY

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE  
HONORABLE RUTH NEELY'S MOTION FOR ORDER REGARDING  
CONFIDENTIALITY**

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**INTRODUCTION**

As this case moves from the Commission on Judicial Conduct and Ethics ("Commission") to this Court, the public, the judiciary, and Judge Neely would benefit from ensuring that the public has access to the proceedings before this Court and the record that the Commission filed in this case. Immediately following the Commission's issuance of a press release about these proceedings over six months ago, this case became the subject of widespread media coverage, much of which tells an incomplete or even inaccurate story. Thus, the public's interest in this case, and Judge Neely's interest in protecting her reputation by fostering an informed public dialogue, warrants ending the secrecy that surrounds these proceedings.

Ensuring that these proceedings and the record are open to the public is particularly appropriate here because this case presents constitutional questions of the utmost public concern. The Commission maintains that because Judge Neely stated that her religious beliefs about marriage preclude her from celebrating same-sex marriages, she cannot be a judge, even a municipal judge who has no authority to perform marriages. If this Court affirms the Commission's position, no judge who shares Judge Neely's religious beliefs about marriage can remain on the bench. But the Wyoming and U.S. Constitutions forbid the government from creating a religious test for office or from punishing public officials for exercising their religion. *See, e.g.*, U.S. Const. amend. I; Wyo. Const. art. 1, § 18 (“[N]o person shall be rendered incompetent to hold any office of trust . . . because of his *opinion on any matter of religious belief whatever.*”) (emphasis added). Shrouding in secrecy a judicial proceeding that will decide whether the Commission has violated those important constitutional protections is a recipe for mistrust and suspicion, whereas guaranteeing that this proceeding is open to the public fosters confidence in the outcome and in the judiciary as an institution.

Judge Neely thus presents two requests in her motion regarding confidentiality. First, she seeks an order confirming that the proceedings before this Court are not confidential. The governing procedural rules support this request. Indeed, neither the Wyoming Rules of Appellate Procedure nor the Rules Governing the Commission on Judicial Conduct and Ethics (“Commission Rules”) indicate that this stage of the proceedings is confidential. Providing for openness when judicial disciplinary proceedings reach this Court makes sense because the reasons typically cited to justify

confidentiality—like protecting judges and the judiciary from the publication of factually unfounded claims—no longer apply at this late stage, particularly in a case like this where the Commission has already issued a press release announcing its prosecution of Judge Neely. Furthermore, if the proceedings before this Court were confidential, that would violate the public’s presumptive right to access judicial proceedings and records, as guaranteed under the First Amendment to the U.S. Constitution.

Second, Judge Neely requests an order stating that the record filed by the Commission in this case is no longer confidential. To that end, Judge Neely waives her right to keep the record secret. Moreover, the asserted justifications for confidentiality in judicial disciplinary proceedings—policies such as maintaining confidence in the judiciary, safeguarding the judge’s reputation, and protecting complainants—do not support a confidential record in this case. In fact, under the unique circumstances presented here, those factors weigh in favor of lifting the veil of confidentiality. In addition, keeping the record hidden from public view contravenes the First Amendment’s purposes of shedding light on governmental affairs and ensuring public access to judicial documents.

### **BACKGROUND**

The Commission’s prosecution of Judge Neely and the basic facts that gave rise to this case are no longer confidential, and they have not been so for over six months. The process of unveiling those facts began on August 18, 2015, when Disciplinary Counsel sent a letter to Judge Neely’s counsel stating that “someone has gone to the press regarding this proceeding and it is no longer confidential.” Letter from Dixon to Connelly

(Aug. 18, 2015) (attached as Exhibit A). The next day, pursuant to Commission Rule 22(c), the Commission issued a press release indicating that Judge Neely was quoted in a newspaper article “as stating that she would ‘not be able to do them,’ referring to same sex-marriages, based upon her religious beliefs”; that “the Commission served Judge Neely with a Notice of Commencement of Formal Proceedings”; and that “Judge Neely admitted she informed the reporter that solemnizing same-sex marriages would violate her religious beliefs.” Press Release, Wyoming Commission on Judicial Conduct and Ethics (Aug. 19, 2015) (attached as Exhibit B). A link to the press release still appears on the Commission’s website. *See* Wyoming Commission on Judicial Conduct and Ethics, <http://judicialconduct.wyo.gov/home> (last visited March 14, 2016) (attached as Exhibit C).

The Associated Press wrote a story based on the Commission’s press release, and as a result, many media outlets (large and small) throughout the country published articles about Judge Neely and this case. *See, e.g.,* Associated Press, *Panel Investigates Wyoming Magistrate over Gay Marriages*, The Washington Times, Aug. 20, 2015 (attached as Exhibit D); Associated Press, *Panel Investigates Wyoming Magistrate over Gay Marriages*, Denton Record-Chronicle, Aug. 20, 2015 (attached as Exhibit E). Some of the media coverage even extended to other nations. *See, e.g.,* Associated Press, *Panel Investigates Wyoming Magistrate over Gay Marriages*, Jamaica Gleaner, Aug. 21, 2015 (attached as Exhibit F). Also, the Center for Judicial Ethics at the National Center for State Courts mentioned Judge Neely’s case in an email sent to judges and judicial-commission staff across the nation. *See* Email from Cynthia Gray (Aug. 26, 2015, 6:21

AM) (attached as Exhibit G).

Not surprisingly, many critics of Judge Neely have publicly speculated about the facts of this case, the governing laws, and the appropriate outcome, often besmirching Judge Neely, reporting an incomplete or even inaccurate version of the relevant facts, and denouncing any possible defense that she might assert. *See, e.g.*, Rodger McDaniel, *Officials should enforce the law, not scripture*, Wyoming Tribune Eagle, Oct. 17, 2015 (attached as Exhibit H) (speculating about specific provisions of the Code of Judicial Conduct that the author believes Judge Neely violated); Kate Perelman, *Wyoming Judge under Investigation for Stating that She Would Not Marry Same-Sex Couples*, Protect Thy Neighbor, Aug. 20, 2015 (attached as Exhibit I) (“It’s probably not a great idea to tell a journalist that you are going to straight up break the law.”). Thus, the general facts that gave rise to this case, as explained in the Commission’s press release, are known to the public, and have been the topic of open discussion, not only throughout Wyoming, but also across the nation.

On August 26, 2015, a week after the Commission issued its press release, a reporter with the Associated Press called Judge Neely about this case. This forced Judge Neely to try to navigate the seemingly narrow path between respecting the confidentiality that surrounds the Commission’s proceedings and ensuring that her legal defense would not be prejudiced by a one-sided public discussion about her case. Thus, the next day, Judge Neely’s counsel sent an email to the Presiding Officer of the Adjudicatory Panel that the Commission assigned to this case. *See* Email from Ken Connelly to Mel Orchard (Aug. 27, 2015, 7:28 AM) (attached as Exhibit J). In that email, Judge Neely’s counsel

explained:

We have now begun receiving calls seeking comment. Given this new and rapidly developing state of affairs, we believe that a failure to respond will greatly prejudice Judge Neely, and that the rules accordingly permit us to respond to inquiries from the press regarding this proceeding. Out of professional courtesy, we wanted to make you aware of our intention to do so. Please let us know if you have a contrary interpretation of the rules.

*Id.* In response, the Presiding Officer stated that the Commission “is meant to be transparent because transparency promotes confidence in the judiciary,” but indicated that he could not say “whether [he] agree[d] . . . that the rules allow [Judge Neely] to respond using the press.” Email from Mel Orchard to Ken Connelly (Aug. 27, 2015, 8:58 AM) (Exhibit J).

Forced to make a difficult decision with no definitive guidance, Judge Neely’s counsel sent a short written statement to the Associated Press reporter. Later that day, the Associated Press published a story that included quotes from the provided statement. *See* Associated Press, *Foundation Supports Wyoming Magistrate on Gay Marriage Stand*, Billings Gazette, Aug. 27, 2015 (attached as Exhibit K). Approximately three weeks later, in the middle of September 2015, the Associated Press again contacted Judge Neely’s counsel and asked for more information about the case. Judge Neely’s attorneys stated that they did not have any additional information to share.

On February 29, 2016, the Commission filed with this Court its Recommendation to remove Judge Neely from the bench because she stated that her religious beliefs about marriage do not allow her to solemnize those unions. The Commission’s Recommendation goes so far as to recommend removing Judge Neely from her position

as a municipal judge, a position in which she does not even have authority to solemnize marriages. Pursuant to Commission Rule 22(a), the Recommendation “los[t] its confidential character upon its filing” with this Court. Thus, the Recommendation is another publicly available document that discloses the existence and status of this case.

In light of all this public disclosure, Judge Neely has decided to, and hereby does, waive the remaining forms of confidentiality that apply in this case. Commission Rule 22 indicates that a judge who is the subject of the Commission’s proceedings may waive confidentiality. *See* Commission Rule 22(c) (mentioning “a waiver of confidentiality by the judge”). Such a waiver is appropriate here. While Judge Neely’s career is the one that most immediately hangs in the balance, the import of this Court’s ruling will extend far beyond her interests. As mentioned above, the Commission maintains that because Judge Neely stated that her religious beliefs about marriage preclude her from celebrating same-sex marriages, she cannot be a judge in this state, even a municipal judge who has no authority to solemnize marriages. If this Court affirms that position, no judge who shares Judge Neely’s religious beliefs about marriage can remain on the bench—notwithstanding that, as the U.S. Supreme Court has recognized, those deeply held beliefs 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). This case is thus of utmost concern to the “thousands, if not tens of thousands[,] of judges” that Disciplinary Counsel has recognized share “the same . . . sincere religious conviction . . . as Judge Neely.” Transcript of Recorded Commission Meeting Proceedings at 7 (Feb. 19,

2016) (found in Volume 7 of the Record).<sup>1</sup>

## ARGUMENT

**I. This Court should enter an order confirming that the proceedings before this Court are not confidential.**

For the reasons discussed below, it is Judge Neely’s understanding that the proceedings before this Court are not confidential, and she requests an order confirming that.

**A. The governing Rules do not indicate that this stage of the proceedings is confidential.**

Neither this Court’s Rules nor the Commission’s Rules indicate that this stage of the proceedings is confidential. To be sure, Commission Rule 22 states that “all proceedings *before the Commission* . . . shall be confidential,” Commission Rule 22(a) (emphasis added), and that unless otherwise ordered “the record which is the basis of the [Commission’s] recommendation remains confidential” even after the Commission files its Recommendation with this Court. *Id.* But nothing indicates that the proceedings before this Court or the parties’ briefs or motions filed with this Court are confidential. Indeed, Commission Rule 19, which governs the “[r]eview procedure in [this] Court,” does not state that those filings are confidential at this stage of the proceedings.

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<sup>1</sup> This case is also of interest to laypeople. The general public has a strong interest in the judiciary and the operation of the judicial system. *See Landmark Commc’ns, Inc. v. Va.*, 435 U.S. 829, 839 (1978) (“The operations of the courts and the judicial conduct of judges are matters of utmost public concern.”). Thus, ordinary citizens, particularly those who share Judge Neely’s beliefs about marriage, have a keen interest in a case (like this) that will decide whether those religious beliefs disqualify a person from judicial office.

**B. The reasons typically invoked to justify confidentiality in judicial disciplinary cases do not apply to this stage of the proceedings.**

The reasons that courts and commentators often cite to justify confidentiality in judicial disciplinary cases do not apply at this advanced stage of the proceedings, particularly given that the Commission's prosecution of Judge Neely has already been publicized through the Commission's press release and has been the subject of much public discussion. As the U.S. Supreme Court has recognized, "the confidentiality of [disciplinary] proceedings protects judges from the injury which might result from publication of" factually unfounded or meritless complaints. *Landmark Commc'ns, Inc. v. Va.*, 435 U.S. 829, 835 (1978). That interest does not apply any longer now that the Commission has publicized the basic facts that gave rise to this case.

The U.S. Supreme Court has also explained that another reason for confidentiality is that "confidence in the judiciary as an institution is maintained by avoiding premature announcement of groundless claims of judicial misconduct." *Id.* Again, that policy is inapplicable now that the Commission's press release and Recommendation are public.

In addition, commentators have often said that "[c]onfidentiality is thought to . . . encourage retirement as an alternative to . . . lengthy formal hearings" and to "protect commission members from outside pressures." Charles Gardner Geyh et al., *Judicial Conduct and Ethics* 12-44 (5th ed. 2013). But here, the proceedings before the Commission have already concluded; thus, any interest in avoiding that part of the process or in protecting commission members from outside pressures is irrelevant.

Because these policies are no longer advanced by continued confidentiality, it

makes sense that the proceedings before this Court should be open.

**C. Maintaining confidentiality at this stage of the proceedings violates First Amendment principles.**

A final reason why the proceedings before this Court should be open is that keeping them confidential would violate First Amendment principles that presumptively require public access to judicial proceedings and records. *See Cir. Ct. of Eighth Judicial Dist. v. Lee Newspapers*, 2014 WY 101, ¶¶ 17-23, 332 P.3d 523, 529-31 (2014) (discussing the First Amendment right to access judicial proceedings and records). The “two complementary considerations” that courts assess when determining whether those constitutional principles apply are (1) “whether the proceedings or documents [at issue] have historically been open to the general public” and (2) “whether public access plays a significant positive role in the functioning of the particular process . . . in question.” *Id.* at ¶ 21, 332 P.3d at 530 (quoting *Press-Enter. Co. v. Super. Ct. of Cal. for Riverside Cty.*, 478 U.S. 1, 8 (1986)). Both of these considerations confirm that the First Amendment right of access applies to the proceedings before this Court.

First, once judicial disciplinary proceedings reach a state’s supreme court, they have historically been open to the general public. In 1978, the U.S. Supreme Court recognized that in most states “the guarantee of confidentiality” in “judicial disciplinary proceedings” “extends only to the point” where a case moves to “the State Supreme Court.” *Landmark Commc’ns*, 435 U.S. at 834 (citing an appendix that catalogued all the relevant rules at that time). That tradition continues today and has even grown stronger over the years. In 2013, the Center for Judicial Ethics at the National Center for State

Courts reported that only three states and the District of Columbia maintain confidentiality when judicial disciplinary cases reach the highest courts within their jurisdictions; the remaining states (including Wyoming) conduct open proceedings before their state supreme courts. *See When Confidentiality Ceases in Judicial Discipline Proceedings*, Center for Judicial Ethics, National Center for State Courts (2013) (attached as Exhibit L). Indeed, Wyoming has historically followed the majority approach of opening judicial disciplinary proceedings once they reach this Court. *See* Rules Governing the Commission on Judicial Conduct and Ethics r. 10 & 27 (prior version of the Commission Rules, effective Nov. 15, 2006) (hereinafter “Prior Commission Rules”) (attached as Exhibit M).

Second, allowing public access to the filings at this stage of the proceedings “will significantly and positively affect the judicial process.” *Cir. Ct. of Eighth Judicial Dist.*, 2014 WY 101, ¶ 23, 332 P.3d at 530. This Court recently concluded that “[t]he public provides a significant and positive influence when judicial documents remain open.” *Id.* at ¶ 23, 332 P.3d at 531. In reaching that conclusion, this Court explained:

[T]he press plays a vital role in disseminating information to the general public concerning the judiciary and what occurs in its domain. The press serves . . . to bring to bear the beneficial effects of public scrutiny upon the administration of justice. Public access to judicial documents serves to broaden the dissemination of information thereby allowing the general public to guard against malfeasance in our . . . justice system.

*Id.* at ¶ 23, 332 P.3d at 531 (citations, quotation marks, and alterations omitted). The U.S. Supreme Court has similarly recognized that these salutary effects also apply in cases involving judicial discipline. *See Landmark Commc’ns*, 435 U.S. at 838-39 (discussing

the “interests in public scrutiny and discussion of governmental affairs” that apply in judicial disciplinary cases).

Another positive effect of conducting this stage of these proceedings free from the cover of confidentiality is that it removes the cloud of secrecy and decreases the likelihood of public suspicion. *See id.* at 842; *Del Papa v. Steffen*, 915 P.2d 245, 248 (Nev. 1996) (per curiam) (noting in a judicial disciplinary case “the threat that secret judicial proceedings pose to public confidence in . . . the judiciary”). This benefit is particularly salient here, where the facts underlying this case have been widely discussed in the media, where important constitutional rights are at stake, and where the Commission seeks to expel a long-tenured and well-respected judge from the bench because of her religious beliefs about marriage.

The First Amendment right of access thus applies to the proceedings before this Court. “[T]he presumption of openness may only be overcome by a demonstration that there is a compelling interest which makes closure essential to preserve higher values, and that any closure is narrowly tailored to serve that compelling interest.” *Cir. Ct. of Eighth Judicial Dist.*, 2014 WY 101, ¶ 24, 332 P.3d at 531 (quotation marks omitted). The Commission can make no such showing here. Indeed, Judge Neely has already demonstrated that the primary reasons thought to justify confidentiality in judicial disciplinary cases do not apply to this stage of the proceedings. *See supra* at 8-9. The Commission thus cannot overcome the presumption favoring the public’s right to access judicial records. *See In re Doe*, 679 So. 2d 900, 901 (La. 1996) (per curiam) (denying a motion to seal the filings of the judicial commission in a disciplinary case pending before

the Supreme Court of Louisiana because, among other reasons, “the public’s right to access public records outweigh[ed] the[] concerns” thought to justify confidentiality); *Del Papa*, 915 P.2d at 249 (invalidating an order requiring confidentiality in a judicial disciplinary proceeding before the Supreme Court of Nevada because the interests underlying the desire for confidentiality do not “override[] the constitutionally protected rights of freedom of speech . . . and access to the courts in a case of the highest public concern”).

**II. This Court should enter an order stating that the record filed by the Commission in this case is no longer confidential.**

**A. Judge Neely waives her right to keep the record confidential.**

Judge Neely seeks an order declaring that the record filed by the Commission in this case is no longer confidential. *See* Commission Rule 22(a) (“A recommendation filed by the Commission with [this] Court loses its confidential character upon its filing. However, the record which is the basis of the recommendation remains confidential unless otherwise ordered.”).

To that end, Judge Neely waives her right to keep the record confidential. As previously mentioned, Commission Rule 22 states that an accused judge may waive confidentiality. *See* Commission Rule 22(c) (mentioning “a waiver of confidentiality by the judge”). And the most logical reading of all the provisions in that Rule indicates that a judge’s right to waive confidentiality includes a right to waive the confidentiality of the record. Commission Rule 22(a) provides that “[n]o member of the Commission or its staff and no employee or agent of the Commission, disciplinary counsel and disciplinary

counsel’s staff, no attorney, and no testifying witness shall disclose” the “information, communications, materials, papers, files, and transcripts . . . received or developed by the Commission in the course of its work.” The accused judge, however, is noticeably absent from the list of people prohibited from disclosing documents in the record. Because it appears that the judge may effectively forfeit the confidentiality of the record by disclosing documents in it with impunity, it stands to reason that she has the right to formally waive the continued confidentiality of the record.

**B. The reasons typically invoked to justify confidentiality in judicial disciplinary cases do not support keeping the record secret.**

Under the circumstances presented in this case, the policies thought to underlie confidentiality do not weigh in favor of keeping the record secret, but in fact support an order opening the record.

**1. Opening the record would further confidence in the judiciary and the judicial disciplinary process.**

One of the reasons for confidentiality in these types of proceedings, as mentioned above, is to maintain “confidence in the judiciary as an institution.” *Landmark Commc’ns*, 435 U.S. at 835. As the U.S. Supreme Court has recognized, “[t]he operations of the courts,” “the judicial conduct of judges,” and “[t]he operation of [state judicial] [c]ommissions” “are matters of utmost public concern.” *Id.* at 839. Where, as here, this Court reviews a judicial disciplinary case that has already been the subject of widespread media attention, that seeks to remove a judge from the bench, and that raises constitutional questions of great importance, confidence in the judiciary and the disciplinary process is furthered by opening the record—not by keeping it secret.

“[A]n enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect.” *Id.* at 842 (quoting *Bridges v. California*, 314 U.S. 252, 270-71 (1941)). This is because “[s]ecrecy leaves open the possibility of abuse” and creates a cloud of uncertainty around the process of judicial discipline. Geyh, *supra*, at 12-46; *see also Del Papa*, 915 P.2d at 249 (“Openness promotes public understanding, confidence, and acceptance of judicial processes and results, while secrecy encourages misunderstanding, distrust, and disrespect for the courts.”). The danger of engendering resentment and suspicion is particularly high here, where the Commission proposes to remove a judge who has been on the bench for more than two decades simply because of her religious beliefs about marriage.

The need for transparency is heightened here because the basic facts that gave rise to these proceedings are already publicly known and have been the topic of widespread discussion and conjecture. As the American Bar Association has explained in the Commentary to Rule 11 of its Model Rules for Judicial Disciplinary Enforcement, when the alleged “[mis]conduct is publicly known” and “the subject of rumor and speculation,” “[t]he integrity of the judicial system is better protected by an open [proceeding].” Model Rules for Judicial Disciplinary Enforcement r. 11 cmt. (Am. Bar Ass’n 1994) (attached as Exhibit N). Other commentators have similarly concluded that “when there is widespread publicity about a case,” an open record is necessary to “promote public confidence in the judiciary” by “dispel[ling] rumor and misperception.” Geyh, *supra*, at 12-64.

Opening the record will also ensure confidence in the judiciary and the disciplinary

process by bringing these proceedings into line with the public’s presumptive constitutional right to access judicial records. *See, e.g., Cir. Ct. of Eighth Judicial Dist.*, 2014 WY 101, ¶ 20, 332 P.3d at 530 (concluding “that the First Amendment right of access attaches to judicial documents”); *Nixon v. Warner Commc’ns*, 435 U.S. 589, 597 (1978) (“It is clear that the courts of this country recognize a general right to inspect and copy . . . judicial records and documents”). Indeed, maintaining a confidential record in this case is at odds with “a major purpose” of the First Amendment—namely, “to protect the free discussion of” and open access to information about “governmental affairs.” *Landmark Commc’ns*, 435 U.S. at 838; *see also* Geyh, *supra*, at 12-64 – 12-65 (“As the [U.S.] Supreme Court has said, using confidentiality to bolster public confidence in the courts . . . is not only self-defeating, but contrary to the openness in government required by the First Amendment.”); *Wyo. Dep’t of Transp. v. Int’l Union of Operating Eng’rs Local Union 800*, 908 P.2d 970, 973 (Wyo. 1995) (discussing the “presumption of openness” in government and “the constitutional right of access to public records” concerning governmental operations). Thus, opening the record will bolster public confidence in the outcome of these proceedings and in the judiciary as an institution.<sup>2</sup>

**2. Opening the record would assist Judge Neely in protecting her reputation.**

Another purpose supposedly advanced by confidentiality is safeguarding judges’

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<sup>2</sup> Recognizing the growing acceptance of the public’s right to know what occurs during the judicial disciplinary process, the Center for Judicial Ethics at the National Center for State Courts reported in 2013 that judicial commissions in 35 states hold *public* hearings in disciplinary cases and that commissions in at least three other states give judges the option to make their hearings public. *See When Confidentiality Ceases in Judicial Discipline Proceedings, supra*, at 1 (Exhibit L).

reputations, which may be harmed by the unnecessary or premature publication of complaints. *See Landmark Commc'ns*, 435 U.S. at 841 (confirming that the state “has an interest in protecting the good repute of its judges”); Geyh, *supra*, at 12-44 (explaining that “confidentiality is thought to . . . protect the reputation of innocent judges wrongfully accused of misconduct”). But in this case, concerns for the accused judge’s reputation actually weigh in favor of lifting confidentiality.

The public currently knows that the Commission has accused Judge Neely of judicial misconduct for stating that her religious beliefs preclude her from celebrating same-sex marriages, and that the Commission has concluded that by stating those religious beliefs, Judge Neely violated the Wyoming Code of Judicial Conduct. But the public has no knowledge of the evidence in the record that undermines the Commission’s conclusion and supports Judge Neely’s defenses. That secrecy, which ensures a one-sided public narrative, unfairly compromises Judge Neely’s reputation and her ability to protect it. Opening the record, however, would dispel unfounded rumors and other partially informed conjecture about Judge Neely and this case.

A few examples illustrate this point. Most of the stories written about this case (see, for example, Exhibits D, E, F, H, and I to this memorandum) are misleading because, among other things, they do not recognize that Judge Neely stated her religious beliefs about marriage only after a reporter called and asked her a pointed question about that topic: whether she was “excited” to solemnize same-sex marriages. *See Neely Aff.* ¶ 35 (found in Document 31 in Volume 4 of the Record) (indicating that the reporter “asked if [Judge Neely] was excited to be able to start performing same-sex marriages”).

Opening the record will thus set Judge Neely's response to the reporter in its proper context.

Also, at least one of the articles discussing this case says that Judge Neely told a reporter that she was "going to straight up break the law." Perelman, *supra*, at 1 (Exhibit I). The evidence in the record, however, dispels the notion that declining to solemnize marriages violates Wyoming law. Instead, the record shows that the Commission has admitted that solemnizing weddings is a matter of discretion (not duty) for part-time circuit court magistrates like Judge Neely. *See* Soto Dep. at 153 (Connelly Aff., Ex. 7) (found in Document 31 in Volume 2 of the Record) (acknowledging that judges are not "required to perform marriages"). The record also demonstrates that many part-time circuit court magistrates and other judges decline to celebrate marriages for myriad secular reasons—like not wanting to perform weddings for strangers, weddings on the weekends, or weddings in certain locations. *See, e.g.*, Soto Dep. at 151-54 (Connelly Aff., Ex. 7); Haws Dep. at 62-63 (Connelly Aff., Ex. 3); Smith Dep. at 41-44 (Connelly Aff., Ex. 8) (all of these transcripts are found in Document 31 in Volume 2 of the Record). Thus, some attempts to denounce Judge Neely's actions and smear her reputation would be thwarted by an order opening the record.

### **3. Opening the record will not harm complainants or witnesses.**

Another commonly invoked justification for confidentiality is to "encourage the filing of complaints and the willing participation of relevant witnesses by providing protection against possible retaliation or recrimination." *Landmark Commc'ns*, 435 U.S. at 835. But the concern about protecting complainants does not apply here. The

Commission initiated this matter on its own motion; thus there is no private complainant. *See* Notice of Commencement of Formal Proceedings at 1 (Document 2 in Volume 1 of the Record). Unlike a private citizen who files a formal complaint against a judge, the Commission is a governmental entity that has no legitimate interest in shielding from public scrutiny its actions when initiating and prosecuting judges on its own motion—this is particularly true once an “own motion” proceeding reaches this Court. Also, the public has a strong interest in knowing how the Commission spends public funds when initiating and prosecuting a case on its own motion. Thus, the “own motion” nature of this proceeding actually supports opening the record in this case.

Nor is the asserted interest in protecting witnesses undermined by an order opening the record in this case. The primary justification for that policy rationale is to avoid “retribution or harassment *by the accused judges* or their associates and colleagues.” Geyh, *supra*, at 12-44 (emphasis added). But Judge Neely (who has no interest in harassing anyone) already has access to the full record and thus knows the names of the witnesses and the substance of their testimony about her. Moreover, the vast majority of evidence in the record is testimony, both oral and written, that Judge Neely obtained to support her defense (rather than testimony that the Commission obtained to support its claims). *See* Neely’s Supporting Materials for Motion for Summary Judgment (Document 31 in the Record) (spanning Volumes 2, 3, and 4 of the Record). Therefore, the goal of avoiding harassment of witnesses by the accused judge is not at all affected by opening the record here.

In addition, the identity and key testimony of witnesses in this case will almost

certainly be public soon enough. As with prior judicial disciplinary matters that reach this stage, this Court will produce a public opinion containing the facts and circumstances that gave rise to this matter, including (presumably) a discussion of the evidence and testimony supporting those facts. *See In re Lopez*, 2012 WY 44, 274 P.3d 405 (2012); *In re Crow*, 2007 WY 13, 151 P.3d 270 (2007). Hence, any suggestion that a confidential record is necessary to keep the identity of witnesses forever hidden is misplaced. *See Geyh, supra*, at 12-45 (“[I]n cases that are not dismissed, the names of complainants and witnesses will be made a matter of public record at some point in time.”).

**C. Maintaining a confidential record at this stage of the proceedings violates First Amendment principles.**

Continuing to shield the record that the Commission has filed with this Court would also violate First Amendment principles that presumptively guarantee public access to judicial records. The two considerations that courts assess when analyzing the First Amendment right of access, *see Cir. Ct. of Eighth Judicial Dist.*, 2014 WY 101, ¶ 21, 332 P.3d at 530 (discussing *Press-Enter. Co.*, 478 U.S. at 8), confirm that that right attaches to the record that the Commission filed in this case.

First, in Wyoming, when judicial disciplinary cases reach this Court, the record from the proceedings before the Commission has historically been open to the general public. Indeed, the prior version of the Commission Rules provided that “[a] record filed by the Commission with [this] Court loses its confidential character upon its filing.” Prior Commission Rule 10(a) (Exhibit M). Thus, the current practice of opening the Commission’s Recommendation to the public while keeping the rest of the record

confidential, *see* Commission Rule 22(a)—a practice that began in April 2014—departs from Wyoming’s tradition of opening the entire record to the public when a judicial disciplinary case is pending in this Court.

Second, allowing the public to access the record at this stage of the proceedings “will significantly and positively affect the judicial process.” *Cir. Ct. of Eighth Judicial Dist.*, 2014 WY 101, ¶ 23, 332 P.3d at 530. As discussed above, this Court recently explained that “[t]he public provides a significant and positive influence when judicial documents remain open.” *Id.* at ¶ 23, 332 P.3d at 531. For the same reasons discussed there, this proceeding will benefit from an open record. *See supra* at 11. Moreover, as Judge Neely has previously established, opening the record would benefit the judicial process by lifting the veil of secrecy and thereby enabling members of the public to satisfy themselves about the fairness of the Commission’s actions in this case. *See supra* at 14-16; *Matter of Hey*, 452 S.E.2d 24, 33 (W. Va. 1994) (“Clearly, the public has a need to know about any deficiencies in [judicial disciplinary] proceedings, and the integrity of the judiciary cannot be advanced by a rule that chills critical discussion . . . of the very process created to enforce and protect judicial integrity.”).

Because these two prerequisites are satisfied, the First Amendment right of access applies to the record that the Commission filed in this case. The Commission may overcome this “presumption of openness” only by satisfying strict scrutiny. *See Cir. Ct. of Eighth Judicial Dist.*, 2014 WY 101, ¶ 24, 332 P.3d at 531. But the Commission cannot do that in this case. In fact, Judge Neely has already shown that the reasons often cited to justify confidentiality do not support keeping the record secret here. *See supra* at 14-20.

A few final points warrant brief mention. In seeking an order that lifts the confidentiality of the record, Judge Neely is not asking the Commission to reveal its internal deliberations. *See* Commission Rule 22(a) (“The deliberations of the Commission, whether oral or written, shall remain confidential.”); Model Rules for Judicial Disciplinary Enforcement r. 11(2)(3) (Am. Bar Ass’n 1994) (Exhibit N) (“[C]ommission deliberations and records of the commission’s deliberations shall not be disclosed.”). Moreover, Judge Neely suggests that if the Commission objects to disclosing specific parts of the record and believes that it has a compelling interest in keeping those items confidential, it should identify them when responding to this motion so that the parties can try to reach a mutual agreement about those specific materials.

### **CONCLUSION**

For the foregoing reasons, Judge Neely respectfully requests an order stating that the proceedings before this Court are not confidential and that the record in this case is no longer confidential.

Respectfully submitted this the 14th day of March, 2016.

By:   
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Attorneys for the Honorable Ruth Neely  
\*Admitted *pro hac vice*

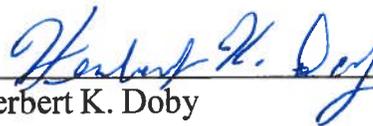
## CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of March, 2016, the original and six copies of the foregoing document were sent to the Wyoming Supreme Court via United States mail overnight delivery, and that the foregoing document was served by mailing a copy of it via United States mail, first class, postage prepaid, to the following:

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\_\_\_\_\_  
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**EXHIBIT A**

PATRICK DIXON  
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# DIXON & DIXON, LLP

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August 18, 2015

**VIA EMAIL [KConnelly@adflegal.org](mailto:KConnelly@adflegal.org)**  
**AND U.S. MAIL**

Kenneth J. Connelly  
Alliance Defending Freedom  
15100 N. 90<sup>th</sup> Street  
Scottsdale, Arizona 85260

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

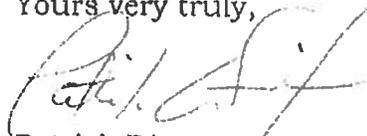
Dear Mr. Connelly:

I am enclosing herewith a draft press release, which the Commission proposes to issue pursuant to Rule 22(c). In the past several days two of our potential witnesses, our Executive Director and I have received telephone calls from a Laura Hancock with the Casper Star Tribune, Wyoming's only statewide newspaper. The reporter has asked that I specifically confirm that there is a Commission proceeding pending against Judge Neely. Obviously, someone has gone to the press regarding this proceeding and it is no longer confidential.

Under the circumstances, I believe that it is appropriate to issue a press release. In my experience, the Casper Star Tribune will continue to pursue this and will publish whether we comment or not. Therefore, pursuant to Rule 22(c) I am submitting this to you for comment or criticism prior to its release.

I would be happy to speak with you by phone if you need more information or would like to provide feedback on the contents of the press release.

Yours very truly,



Patrick Dixon

PD:kc

Enclosures: as stated

cc: Wendy Soto, Executive Director, CJCE

**PRESS RELEASE – WYOMING COMMISSION ON JUDICIAL CONDUCT AND ETHICS BY WENDY SOTO, EXECUTIVE DIRECTOR**

On December 11, 2014 an article appeared in the Sublette Examiner quoting the Honorable Ruth Neely, Pinedale Municipal Judge. The article concerned same sex marriage and quoted Judge Neely as stating that she would “not be able to do them,” referring to same sex marriages, based upon her religious beliefs. As a result of this article, a complaint was made to the Wyoming Commission on Judicial Conduct and Ethics, as a result of which, on its own motion the Commission conducted an investigation. As a result of its investigation, on March 4, 2015, the Commission served Judge Neely with a Notice of Commencement of Formal Proceedings, alleging the violation of six separate Canons or Rules of judicial conduct. In response, Judge Neely admitted to making the statements in the newspaper, denied that they violated the Code of Judicial Conduct and alleged thirteen separate affirmative defenses, primarily based upon her constitutional rights. The matter is set for hearing at Casper, Wyoming on December 3, 2015 before an adjudicatory panel of the Commission.

**EXHIBIT B**

**WYOMING COMMISSION ON JUDICIAL CONDUCT AND ETHICS**

FOR IMMEDIATE RELEASE—August 19, 2015

Contact: Wendy J. Soto, Executive Director  
Commission on Judicial Conduct and Ethics  
P.O. Box 2645  
Cheyenne, WY 82003  
307-778-7792  
Email: [wendy.soto@wyboards.gov](mailto:wendy.soto@wyboards.gov)

On December 11, 2014, an article appeared in the Sublette Examiner quoting the Honorable Ruth Neely, Pinedale Municipal Judge and Circuit Court Magistrate. The article concerned same-sex marriage and quoted Judge Neely as stating that she would “not be able to do them,” referring to same sex-marriages, based upon her religious beliefs. As a result of this article, the Wyoming Commission on Judicial Conduct and Ethics initiated an investigation on its own motion. As a result of its investigation, on March 4, 2015, the Commission served Judge Neely with a Notice of Commencement of Formal Proceedings, alleging the violation of six separate Canons or Rules of judicial conduct. In response, Judge Neely admitted she informed the reporter that solemnizing same-sex marriages would violate her religious beliefs, denied that she had violated the Code of Judicial Conduct and raised thirteen separate affirmative defenses, primarily based upon her constitutional rights. Judge Neely has the right to a fair hearing without pre-judgement. The matter is set for hearing before an adjudicatory panel of the Commission.

**EXHIBIT C**

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## Commission on Judicial Conduct and Ethics

The Wyoming Commission on Judicial Conduct and Ethics is a constitutionally created body charged with handling complaints about the ethical conduct of judges in Wyoming. The Commission is made up of citizens appointed by the Governor, attorneys appointed by the Wyoming State Bar, and judges elected by the Judicial Council.



The Commission considers complaints of judicial misconduct made against judicial officers and may discipline a judicial officer or make a recommendation of discipline to the Wyoming Supreme Court.

The Commission cannot provide legal advice and does not review complaints against any attorneys. Please see the Rules Governing the Commission on Judicial Conduct and Ethics ([Commission Rules](#)) and our [Frequently Asked Questions](#) for more information.

**[New! Press Release August 19, 2015](#)**

**[Press Release -- 2015 Commission Appointments](#)**

**[2014 Annual Report](#)**

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**EXHIBIT D**

You are currently viewing the printable version of this article, to return to the normal page, please [click here](#).

## Panel investigates Wyoming magistrate over gay marriages

By - Associated Press - Thursday, August 20, 2015

CASPER, Wyo. (AP) - A state judicial panel is investigating a western Wyoming local magistrate who was quoted in a local newspaper saying she would not perform same-sex marriages.

Pinedale Municipal Judge Ruth Neely told the Sublette Examiner in a story published last December she would not marry gay couples because of her religious beliefs. She said there was at least one other magistrate in the area who could marry gay couples if necessary.

"When law and religion conflict, choices have to be made," she was quoted as saying in the story.

The story came less than three months after a federal judge in Casper struck down Wyoming's gay marriage ban last year.

The Wyoming Commission on Judicial Conduct and Ethics said in a statement that it has begun an investigation of Neely over six possible violations of judicial conduct, the Casper Star-Tribune reported (<http://bit.ly/1Pobk0B>).

"In response, Neely admitted she informed the reporter that solemnizing same-sex marriages would violate her religious beliefs" but denied she violated judicial code, the commission statement said. She also raised "13 separate defenses, primarily based on her constitutional rights," it said.

It noted that Neely is entitled to a fair hearing but did not indicate when the hearing would occur.

Neely declined to comment to The Associated Press on Thursday.

According to its website, the judicial conduct commission could take one of several actions, including privately censure the judge, temporarily suspend her or dismiss the complaint if no violation is found. The commission can make recommendations to the Wyoming Supreme Court for her suspension, public censure, retirement or removal from office.

The Wyoming Code of Judicial Conduct mentions sexual orientation several times, including a section that says a judge shall not, while performing judicial duties, show bias or prejudice based upon factors such as race, sex and sexual orientation.

Another section states bias or prejudice, even outside the judge's official duties, "are likely to appear to a reasonable person to call into question the judge's integrity and impartiality." The section then lists jokes or remarks that demean people based on factors such as sexual orientation.

—

Information from: Casper (Wyo.) Star-Tribune, <http://www.trib.com>

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**EXHIBIT E**

## Panel investigates Wyoming magistrate over gay marriages

Published: 20 August 2015 09:52 PM

CASPER, Wyo. (AP) — A state judicial panel is investigating a western Wyoming local magistrate who was quoted in a local newspaper saying she would not perform same-sex marriages.

Pinedale Municipal Judge Ruth Neely told the *Sublette Examiner* in a story published last December she would not marry gay couples because of her religious beliefs. She said there was at least one other magistrate in the area who could marry gay couples if necessary.

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European And Turkish Leaders Hold Summit On Migration

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**FROM POINT A**



**TO POINT B**



**EXHIBIT F**

Published on *Jamaica Gleaner* (<http://new.jamaica-gleaner.com>)

[Home](#) > Panel investigates Wyoming magistrate over gay marriages

Published: Friday | August 21, 2015 | 12:00 AM [1]

CASPER, Wyoming (AP):

A state judicial panel is investigating a western Wyoming local magistrate who was quoted in a local newspaper saying she would not perform same-sex marriages.

Pinedale Municipal Judge Ruth Neely told the **Sublette Examiner** in a story published last December she would not marry gay couples because of her religious beliefs. She said there was at least one other magistrate in the area who could marry gay couples if necessary.

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**Source URL:** <http://new.jamaica-gleaner.com/article/world-news/20150821/panel-investigates-wyoming-magistrate-over-gay-marriages>

**Links:**

[1] <http://new.jamaica-gleaner.com/authors>

**EXHIBIT G**

From: Wendy Soto <[wendy.soto@wyoboards.gov](mailto:wendy.soto@wyoboards.gov)>  
To: Wendy Soto <[wendy.soto@wyoboards.gov](mailto:wendy.soto@wyoboards.gov)>  
Subject: Fwd: Up-date from the NCSC Center for Judicial Ethics: August 26, 2015  
Date: Wed, 26 Aug 2015 09:58:42 -0600

Wendy J. Soto  
Executive Director  
Commission on Judicial Conduct and Ethics  
PO Box 2645  
Cheyenne WY 82003  
Telephone 307-778-7792  
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<http://judicialconduct.wyo.gov>

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From: **Gray, Cynthia** <[cgray@ncsc.org](mailto:cgray@ncsc.org)>  
Date: Wed, Aug 26, 2015 at 6:21 AM  
Subject: Up-date from the NCSC Center for Judicial Ethics: August 26, 2015  
To: "Gray, Cynthia" <[cgray@ncsc.org](mailto:cgray@ncsc.org)>



**NCSC**

National Center for State Courts

Center for Judicial Ethics

## Up-date from the NCSC Center for Judicial Ethics: August 26, 2015 (33)

- 2 Arizona judges reprimanded
- New Mexico Commission recommends censure, fine, and probation for judge who refused to review an application for an

arrest warrant when she was the on-call judge and misrepresented her identity to the requesting officer

- Wisconsin advisory opinion on same-sex marriage
- According to news reports

\* \* \*

Remember that the registration fee for the **24<sup>th</sup> National College on Judicial Conduct and Ethics** goes from \$375 to \$400 after August 31. Our block at the Embassy by Hilton Chicago—Downtown/Lakefront is also beginning to fill up. There is more information, including a registration form and on-line registration, at [www.ncsc.org/cje](http://www.ncsc.org/cje).

\* \* \*

The **Arizona Commission on Judicial Conduct** has publicly reprimanded 2 judges, denying motions to reconsider on August 7.

The Commission publicly reprimanded Judge Gerald Williams for being “terse” with the litigants at the start of a judgment debtor’s examination, making comments to the judgment debtor that were mocking and demeaning, and continuing with the judgment debtor exam even after learning that the judgment debtor had filed for bankruptcy prior to the hearing date. Williams, Order (June 22, 2015) (<http://www.azcourts.gov/portals/137/reports/2015/15-085.pdf>). The Commission stated that, even though the judge took responsibility for his unprofessional demeanor, it was “deeply troubled by the fact that Judge Williams has been previously publicly reprimanded for improper demeanor . . . . Judge Williams should be fully aware that any future complaint of a similar nature may lead to the filing of formal charges against him and the imposition of more serious discipline, including censure,

suspension, or removal.” In addition, although the Commission acknowledged “that extenuating circumstances existed as to why Judge Williams did not initially know the judgment debtor had filed for bankruptcy protection, once that knowledge came to light, a better practice would have been to terminate the hearing altogether, rather than attempting to continue the hearing on the non-filing spouse.”

The Commission reprimanded Judge Jeanne Garcia for having an ex parte conversation with a Department of Child Safety caseworker in a family law case and issued a ruling that discussed and cited the ex parte conversation as a basis for denying the relief the mother sought without allowing the parties an opportunity to be heard about the substantive information she received. Garcia, Order (May 12, 2015) (<http://www.azcourts.gov/portals/137/reports/2015/15-062.pdf>). In a motion for reconsideration, the mother argued that the judge had made her decision based on incorrect information. The Department confirmed that the information the judge stated in her order was not correct. The judge admitted that contacting Department caseworkers off the record and outside the presence of the parties was her typical practice.

In her motion to reconsider, the judge stated that, during a panel discussion held at a recent judicial conference, another judge had “shared how he has spoken to probation officers about criminal defendants on his sex crimes caseload” and asked the Commission, if it was going to publish the reprimand, to “explain the differences between the two situations to educate all those reading it.” The examiner’s response to the motion states that the exception to the prohibition on ex parte communications for court personnel “might encompass the situation of a judge speaking to a probation officer about a pending criminal matter or a parenting coordinator in a family law matter,” but noted the Department caseworker was not a judicial branch employee and that, in any

event, the exception requires a judge to notify the parties if she acquires factual information outside the record and gives them an opportunity to respond, which the judge had not done.

\* \* \*

The **New Mexico Judicial Standards Commission** has recommended that Judge Jacqueline Flores be censured and fined \$1,000 for refusing to review an application for an arrest warrant when she was the on-call judge and misrepresenting her identity to the requesting officer. The Commission also recommended that she receive additional training and be placed on unsupervised probation for 2 years, with a 60-day suspension without pay imposed if she violates probation. On March 13, 2013, the judge was the primary on-call judge. At 1:16 a.m., she received a telephone call from a police detective seeking approval of a felony arrest warrant in a domestic violence case. The judge asked him, "Why does it have to be now?" and said "I only have to do search warrants." The detective explained the circumstances giving rise to the warrant request and asked the judge again if she was going to sign the warrant. The judge told the detective "no," without reviewing the request. The detective asked the judge for her name, and she identified herself as Judge Slaughter.

\* \* \*

The **Wisconsin Judicial Conduct Advisory Committee** has issued an opinion stating that a judicial officer may not, because of his or her religious or personal beliefs, decline to officiate at the marriage of 2 persons of the same sex but may decline to perform all marriages. [Wisconsin Advisory Opinion 2015-1](http://www.wicourts.gov/sc/judcond/DisplayDocument.pdf?content=pdf&seqNo=146878) (<http://www.wicourts.gov/sc/judcond/DisplayDocument.pdf?content=pdf&seqNo=146878>). This week's blog post at [ncscjudicialethicsblog.org](http://ncscjudicialethicsblog.org) summarizes the 7 advisory opinions, decisions, or articles on the issue of judges' performing same-sex

marriages issued so far by conduct commissions or advisory committees.

According to news reports, the **Wyoming** Commission on Judicial Conduct and Ethics has commenced formal proceedings against Judge Ruth Neely, a municipal judge and circuit court magistrate, for saying she would not perform gay marriages. The investigation began after a newspaper story quoted the judge. In response to the Commission, the judge admitted she informed the reporter that solemnizing same-sex marriages would violate her religious beliefs, denied that she had violated the code of judicial conduct, and raised 13 separate defenses, primarily based on her constitutional rights.

\* \* \*

**According to news reports:**

\* In **Arkansas**, Judge Joe O'Bryan was arrested and charged with assaulting his girlfriend at a home, grabbing her by the throat and throwing her onto a table.

\* At his request, Judge John Contini has been transferred from the criminal division to family court. As reported in previous updates, the state attorney's office had previously asked the **Florida** 4<sup>th</sup> District Court of Appeal to remove him from 1,000 criminal cases after he sent an e-mail to a public defender offering strategic advice about seeking reduced sentences for convicted felons. The appeals court stayed the judge's cases. During a hearing, the judge told an assistant state attorney that the attorney general's office had deliberately misled the appeals court about the number of cases that were "pending sentencing" by providing a list of hundreds that were nowhere near resolution when there were only 28 cases that fit the appeals court's

definition and that the state attorney's office had been "co-complicit."

\* On Thursday, a grand jury indicted former judge Cynthia Becker on 4 state felony counts of making false statements to the **Georgia** Judicial Qualifications Commission in a meeting with 3 members of the Commission, its executive director, and the Commission investigator and a misdemeanor charge that she had made a false statement to a law enforcement officer (the Commission investigatory) that hindered him "in the lawful discharge of his official duties." On Monday the charges were dropped after Becker signed a consent order in which she agreed not to seek to become a judge again and to write a letter in which she acknowledged that she unintentionally made erroneous statements. She resigned last year, effective in February. As reported in previous up-dates, in March, the Commission instituted formal proceedings alleging that former judge Becker (1) in a corruption case against school superintendent Crawford Lewis and 2 others, failed to follow a plea agreement she had assented to for Lewis, refused to allow him to withdraw his guilty plea, and refused to grant a bond to which he was entitled as a matter of law, causing him to be illegally held in the county jail for 4 days; (2) during a meeting with the Commission, repeatedly and flatly denied knowing that Lewis wanted a bond despite e-mails from her staff attorney to Lewis's attorney indicating she had consulted with the judge about the emergency motion for a bond; (3) told the attorneys for the other defendants ex parte they should withdraw their notices of appeal, so that jurisdiction would return to her court and she could file an order of remand; and (4) made public comments about the case at a political forum.

\* In **Indiana**, during a child support hearing, Judge Michael Coll asked the father, Kostas Hartas, "Are you of Greek background sir?" When Hartas said yes, the judge said, "So can I take judicial note of the fact that the Greeks are in bankruptcy as a nation and

one of the reasons, the principal reason, is because none of them ever pay taxes? That's why their country is in bankruptcy." Subsequently, the judge vacated the child support order he had entered after the hearing and e-mailed an apology, stating "my language does not accurately reflect my feelings about the Greek community."

\* After the prosecutors filed a complaint, the **New Mexico** Judicial Standards Commission issued a "letter of caution" to Judge Ted Baca about conditions he imposed when he restored the license of a defendant convicted of 4 DWIs. Issued several days after his retirement and 3 weeks after the Court of Appeals overturned the judge, the letter stated, "While the Commission recognizes your attempt to protect the public from persons who have been convicted of multiple DWIs, it is the Commission's position that by requiring petitioners to appear at post-adjudication 'status hearings,' you have in effect subjected the petitioners to indefinite, discretionary probation under your supervision without express statutory authority."

\* The **New York** Advisory Committee on Judicial Ethics has advised Judge John Rouse to stop talking to the media about the death of his brother James from Legionnaires' disease and questioning New York City's response to it. The judge and his family have criticized the City for failing to visit the school where his brother worked and stated they believe he was the "canary in the coal mine" for a recent outbreak that killed 12 people. After Judge Rouse spoke to DNAinfo New York, other media outlets contacted him, including ABC TV's "World News Tonight" and Fox News, and he asked the committee for advice.

\* Cleveland.com ran a series called: "Municipal judges bill public more than \$50,000 at conferences in Hawaii, Vegas, Florida and more: Frequent Flyers."

**\* In Texas**, a former court manager has filed a federal lawsuit alleging Justice of the Peace Russ Casey forced her to have sex with him 20 times over nearly 5 years and fired her when she told him she wanted to stop. The initial instance occurred in December 2009. The judge sexually harassed and physically abused the woman during work hours, at the office or at conferences, and threatened her job security daily. The judge would expose himself to the woman in his office and in court, lock the door to his office, and force her to touch his genitals and provide him with oral sex, intercourse or both, the lawsuit says. The woman called the county human resources office twice to complain, but the women who answered the telephone offered no assistance or said he was an elected official and that the county could do nothing about it. The suit alleges that, when the woman at times refused to have sex with him, the judge “threatened to terminate her, screamed obscenities at her in front of other staff, accused her of embezzlement, investigated her, and terminated her.”

**Cynthia Gray** | Director, Center for Judicial Ethics

National Center for State Courts | 2425 Wilson Boulevard, Suite 350 | Arlington, VA 22201

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## Rodger McDaniel column: Officials should enforce the law, not scripture

Oct 17, 2015

Those Bible-toting Christians in Kentucky are a hardscrabble bunch. Some even risk death clinging to their interpretation of the Bible.

For example, snake-handling preacher Jamie Coots of Middlesboro, Kentucky, never backed away from his beliefs despite state laws making snake handling a crime. Last year Mr. Coots died after being bitten by a rattlesnake during a church service.

Mr. Coots' family refused to summon medical care because their Bible said God would take care of him. Who needs doctors? Mark 16:18 makes it so clear: "They shall take up serpents; and if they drink any deadly thing, it shall not hurt them; they shall lay hands on the sick, and they shall recover."

But Mr. Coots didn't recover. He died.

Now another Bible-thumping Kentuckian is willing to take her chances. Kim Davis is the county clerk

who decided to convert her little piece of our democracy into a theocracy.

The U.S. Supreme Court told her she must issue marriage licenses to same-sex couples. Southern bigots always have viewed Supreme Court edicts as unlawful interference with their way of life.

Ms. Davis says she doesn't work for the Supreme Court. She's in God's army.

When all of this washes out, Ms. Davis may feel about as snake-bit as Jamie Coots.

Wyoming has its own "Kim Davis." Pinedale's Municipal Judge Ruth Neely has not been asked to wed people of the same sex. But she gratuitously announced that doing so would violate her beliefs.

"When law and religion conflict," Judge Neely announced, "choices have to be made."

The two cases pose an interesting challenge for those who must decide whether public officials can refuse to do parts of their jobs when they make a subjective decision that those duties conflict with personally held religious beliefs.

The judge and the county clerk do not ask that all the marriage rules of the Bible be recognized. After all, where the Bible is more than a little ambiguous about same-sex marriage, Jesus was clear about divorce. Neither the clerk nor the judge asks to be excused from being involved in the weddings of divorced people.

The Wyoming Judicial Conduct and Ethics Commission is doing its job. The commission is investigating Judge Neely's conduct.

You see, there are rules that even judges must follow.

The first Canon of the Wyoming Code of Judicial Conduct says:

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

The commission rules define "impartiality." Judges must avoid even an appearance of bias or prejudice against parties or classes of parties.

It is arguable that Judge Neely sent a signal to gays, lesbians, bisexual and transgender people that they are not considered equal under the law.

Judge Neely feels she must choose between her interpretation of scripture and her public duties. While she did not elaborate, it is certain that she, like Ms. Davis in Kentucky, believes her narrow understanding of what God wants varies from what the law expects of her.

The ethical question is: "Does any gay or lesbian believe she or he can get a fair trial in Judge Neely's courtroom?"

Those whom the good judge's Good Book says are "an abomination" may be concerned that this judge has not avoided "impropriety and the appearance of impropriety." Any party to a judicial proceeding who happens to be gay or lesbian has a right to be comfortable with the assumption they will be treated impartially.

As a theologian, I find it curious that the scripture is far more certain in its promise to care for the well being of snake handlers than in its rejection of marriages between people in love who happen to be homosexual. The latter requires a great deal of scriptural interpretive gymnastics.

Christians of good faith may disagree about whether the Bible proscribes same-sex marriage. But that is an entirely religious discourse.

Scriptural interpretation is not a part of Clerk Davis' or Judge Neely's job description. Impartial administration of the law is.

Rodger McDaniel is a Cheyenne resident. Email: rmc81448@gmail.com.



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**EXHIBIT I**

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AUGUST 20, 2015 ( /POSTS/2015/8/20/WYOMING-JUDGE-UNDER-INVESTIGATION-FOR-  
STATING-THAT-SHE-WOULD-NOT-MARRY-SAME-SEX-COUPLES )

## WYOMING JUDGE UNDER INVESTIGATION FOR STATING THAT SHE WOULD NOT MARRY SAME-SEX COUPLES ( /POSTS/2015/8/20/WYOMING-JUDGE- UNDER-INVESTIGATION-FOR-STATING-THAT-SHE- WOULD-NOT-MARRY-SAME-SEX-COUPLES )

KATE PERELMAN ( /POSTS/?AUTHOR=55C4D209E4B034FC5196D146 )

Pinedale municipal judge and circuit court magistrate Ruth Neely is under investigation after being quoted in a newspaper story in October 2014 saying that she would not marry same-sex couples. This comment came less than three months after U.S. District Judge Scott W. Skavdahl of Casper struck down the state's ban on marriage for Wyoming LGBT residents.

From the *Casper Star-Tribune*:

'Neely...told the Sublette Examiner she would not be able to marry gay couples. She said there was at least one other magistrate in the area who could marry gay couples if necessary.

'When law and religion conflict, choices have to be made,' she said in the Dec. 11 story. 'I have not yet been asked to perform a same-sex marriage.'

As a result of the newspaper story, the Wyoming Commission on Judicial Conduct and Ethics began an investigation, according to a statement from the commission.

On March 4, the commission served Neely with a notice of commencement of formal proceedings, which is a disciplining proceeding, the statement said.

The notice alleged she violated six separate canons, or rules of judicial conduct, the statement said.

'In response, Neely admitted she informed the reporter that solemnizing same-sex marriages would violate her religious beliefs, denied that she had violated the Code of Judicial Condition and raised 13 separate defenses, primarily based on her constitutional rights,' the statement said.

Read more» ( [http://trib.com/news/local/crime-and-courts/judge-under-investigation-for-saying-she-would-not-officiate-gay/article\\_4a737202-bf8e-5e32-8ebo-e7fb86de3528.html](http://trib.com/news/local/crime-and-courts/judge-under-investigation-for-saying-she-would-not-officiate-gay/article_4a737202-bf8e-5e32-8ebo-e7fb86de3528.html) )

It's probably not a great idea to tell a journalist that you are going to straight up break the law.

Source: <http://trib.com/news/local/crime-and-courts/judge-under-investigation-for-saying-she-wo...>

Tagged: [LGBT Rights \(/posts/?tag=LGBT+Rights\)](/posts/?tag=LGBT+Rights), [Government Services \(/posts/?tag=Government...](/posts/?tag=Government...)

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**EXHIBIT J**

**From:** Mel Orchard [<mailto:orchard@spencelawyers.com>]  
**Sent:** Thursday, August 27, 2015 8:58 AM  
**To:** Ken Connelly  
**Cc:** [pdixn@aol.com](mailto:pdixn@aol.com); Doug Wardlow; Wendy Soto  
**Subject:** Re: Pending Motion for Protective Order in Judge Neely Matter

Ken,

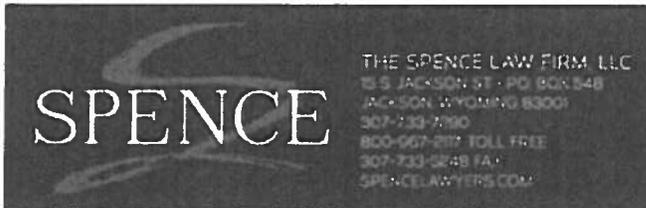
Thanks for the heads up.

i haven't thought about this issue.

Here are my immediate thoughts. One, our commission is meant to be transparent because transparency promotes confidence in the judiciary. In my opinion, and probably yours, our judiciary is the most important pillar of our democracy because it is the most removed from politics. Two, you can interpret the rules as well as I. I can't give you a ruling at this time because I don't have briefing and haven't done the research. I appreciate the professional courtesy, but i just can't tell you whether I agree or not at this time that the rules allow you to respond using the press.

Mel

Mel C. Orchard, III  
Board Certified Trial Lawyer



<http://www.spencelawyers.com/> on the Web: [www.spencelawyers.com](http://www.spencelawyers.com) <<http://www.spencelawyers.com>>  
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> Confidentiality Notice

>

> If you received this message as an unintended recipient, please email it back to let me know. Then please discard the original. This may be attorney-client or privileged material and is protected by law. Thank you.

On Aug 27, 2015, at 7:28 AM, Ken Connelly <[KConnelly@adflegal.org](mailto:KConnelly@adflegal.org)> wrote:

Judge Orchard

We do have one other pressing matter.

Last week, Disciplinary Counsel informed counsel for Judge Neely that he, the Commission's Executive Director, and two potential witnesses had received phone calls from a reporter for the Casper Star regarding the pendency of this proceeding. This obviously signaled that someone (likely one of Judge Neely's subpoenaed deponents) had gone to the press and breached the confidentiality provisions governing this proceeding. As a result, the Commission released a public statement, effectively rendering the proceeding no longer confidential. Further calls to the Commission this week inquired as to the identity of Judge Neely's counsel, and by agreement the Commission referred our contact information to inquiring reporters. We have now begun receiving calls seeking comment. Given this new and rapidly developing state of affairs, we believe that a failure to respond will greatly prejudice Judge Neely, and that the rules accordingly permit us to respond to inquiries from the press regarding this proceeding. Out of professional courtesy, we wanted to make you aware of our intention to do so. Please let us know if you have a contrary interpretation of the rules.

Sincerely,

Ken Connelly

**EXHIBIT K**

[http://billingsgazette.com/news/state-and-regional/wyoming/foundation-supports-wyoming-magistrate-on-gay-marriage-stand/article\\_ab582f50-0cb2-51a1-976d-0f8a8971b466.html](http://billingsgazette.com/news/state-and-regional/wyoming/foundation-supports-wyoming-magistrate-on-gay-marriage-stand/article_ab582f50-0cb2-51a1-976d-0f8a8971b466.html)

AP

## Foundation supports Wyoming magistrate on gay marriage stand

Associated Press Aug 27, 2015

CHEYENNE, Wyo. — A conservative law firm that has worked to oppose gay marriage initiatives nationwide is representing a Wyoming magistrate under investigation for saying she would refuse to perform same-sex marriages.

Municipal Judge and Circuit Court Magistrate Ruth Neely of Pinedale faces an upcoming hearing before the Wyoming Commission on Judicial Conduct and Ethics. The commission is probing statements Neely made to the press that she would not perform same-sex marriages because of her religious beliefs.

Lawyers with the Alliance Defending Freedom, an Arizona religious advocacy law firm, are representing Neely.

"Removing a respected public servant from office because of her religious beliefs is a violation of both the U.S. and Wyoming constitutions," ADF lawyer Ken Connelly said Thursday.

"Merely stating a view about marriage that was the law across the country and in Wyoming until recently should not result in a government investigation and possible removal from office," Connelly said. "All Americans — regardless of political affiliation or religious belief — should be alarmed by this."

The ADF, which was founded by conservative religious organizations, has opposed gay marriage initiatives while defending business owners such as florists who have been sued for refusing to providing services to same-sex wedding ceremonies.

The Sublette Examiner published a story in December quoting Neely as saying she would not marry gay couples because of her religious beliefs. She said there was at least one other magistrate in the area who could marry gay couples if necessary.

"When law and religion conflict, choices have to be made," Neely she was quoted as saying.

The story came less than three months after a federal judge in Casper struck down Wyoming's gay marriage ban last year. The U.S. Supreme Court ruled in June that same-sex couples have a right to marry.

In a telephone interview Thursday, Neely said she has never been asked to perform a same-sex marriage and declined further comment.

Wendy J. Soto, executive director of the Commission on Judicial Conduct and Ethics, issued a statement last week saying the commission had started an investigation as a result of the article. According to the statement, the commission served Neely in March with notice that it was commencing formal proceedings against her on six allegations of violation of the rules of judicial conduct.

Soto this week declined to provide copies of the notice of violation sent to Neely or her response to it. Soto declined to say when the commission hearing will occur.

Despite the U.S. Supreme Court ruling this summer upholding same-sex marriage, conflicts continue to arise over whether public officials may assert a personal, religious objection to issuing licenses.

In Kentucky, Rowan County Clerk Kim Davis' office on Thursday continued to turn away same-sex couples seeking marriage licenses despite federal court orders to issue them. She has claimed her Christian faith and constitutional right to religious freedom should exempt her from having to license unions she finds morally objectionable.

Jason Marsden is executive director of the Denver-based Matthew Shepard Foundation and a former Wyoming resident. The foundation is named after the University of Wyoming student who was beaten, tied to a fence and left for dead in 1998. His murder became a rallying cry in the gay rights movement and a federal hate crimes law now bears his name.

Marsden said Thursday that public officials and businesses have not been successful in claiming that they have a right not to provide services to gays and lesbians that they would provide to other citizens.

"These people are using the judicial system, which is their right," Marsden said. "They're going to find out from the judicial system that doing their job for gay and lesbian customers and citizens is their responsibility. And they will ultimately be forced to do it, or face the legal consequences of their choices."

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**EXHIBIT L**

# When confidentiality ceases in judicial discipline proceedings<sup>±</sup>

Revised 2013



**NCSC**  
NATIONAL CENTER FOR STATE COURTS  
Center for Judicial Ethics

Fact-finding hearing is public (35 states)			Fact-finding hearing is confidential (15 states + D.C.)	
Proceedings public when formal charges are filed (28)	Proceedings public when answer to formal charges is filed or due (5)	Hearing is public (2)	Proceedings confidential until recommendation for public discipline is filed (13)	Proceedings confidential until court orders public discipline (3)
Alabama	Arizona	Oregon <sup>5</sup>	Colorado	Delaware
Alaska	Kentucky	Rhode Island	Idaho	D.C.
Arkansas	Maryland		Iowa	Hawaii
California	Massachusetts <sup>3</sup>		Louisiana	North Carolina
Connecticut	Minnesota		Maine <sup>6</sup>	
Florida	South Carolina <sup>4</sup>		Mississippi <sup>7</sup>	
Georgia			Missouri**	
Illinois			New Mexico	
Indiana*			New York**	
Kansas			South Dakota**	
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Nebraska			Wyoming	
Nevada				
New Hampshire				
New Jersey* <sup>1</sup>				
North Dakota* <sup>2</sup>				
Ohio				
Oklahoma				
Pennsylvania				
Tennessee				
Texas				
Vermont*				
Washington*				
West Virginia*				
Wisconsin				

\* Public after service of charges on the judge

\*\* Hearing may be public at judge's request

1. **New Jersey:** "If the Committee files a formal complaint against the judge, the complaint and all further proceedings thereon shall be public except that the Committee may apply to the Supreme Court for permission to retain confidentiality in a matter involving special circumstances, such as when the Committee determines that the privacy interests of a witness or other person connected with the matter outweigh the public interest in the matter."
2. **North Dakota:** "Formal hearings . . . are open unless for good cause shown upon the request of the complainant, upon the request of the respondent judge or upon motion of the Commission all, or part, of the hearing is ordered closed by the Commission."
3. **Massachusetts:** "Notwithstanding any other provision of this chapter to the contrary, proceedings pursuant to this chapter may remain confidential, even after a finding of sufficient cause, if the judge, the commission, and the complainant, if any, all concur."
4. **South Carolina:** "When formal charges are filed regarding allegations of misconduct, the formal charges and any answer shall become public 30 days after the filing of the answer or, if no answer is filed, 30 days after the expiration of the time to answer . . ."
5. **Oregon:** Press releases are issued 14 days before the public hearing on formal charges.
6. **Maine:** "Upon request of the person whose conduct is being investigated, or by majority vote of the Committee, after giving that person an opportunity to express his views on the question, any hearing held pursuant to paragraph 7 of this order shall be public."
7. **Mississippi:** "All proceedings before the Commission shall be confidential, except upon unanimous vote of the Commission, as prescribed in Section 177A of the Mississippi Constitution of 1890."

± Many states have exceptions to confidentiality (for example, to allow reporting to law enforcement or bar authorities) that are not reflected in this chart.

**EXHIBIT M**

## **RULES GOVERNING THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS**

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7. Staff for Commission and disciplinary counsel.
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11. Defamatory material.
12. Jurisdiction; temporary discipline or interim suspension; subpoenas.
13. Investigatory panel.
14. Disposition of subsequent complaints.
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16. Settlement.

17. Formal proceedings; adjudicatory panel selection; designation of presiding officer and hearing officer; notice.
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20. Discovery.
21. Procedural rights of judge.
22. Hearing additional evidence.
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24. Final adjudication.
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26. Certification of Commission recommendation to Wyoming Supreme Court.
27. Review procedure in Wyoming Supreme Court.
28. Contempt.

**Rule 1. Scope of title.**

These rules are promulgated pursuant to Wyo. Const. art. 5, § 6(e)(iv). They apply to all proceedings before the Commission involving the censure, suspension, removal, retirement, imposition of monetary sanctions, or other discipline of a judge.

**Rule 2. Definitions.**

In these rules, unless the context or subject matter otherwise requires:

- (a) "Civil misconduct" means "a finding by any court, tribunal, agency, or commission of any local, state or federal authority, of misconduct, contempt, or refusal to comply with lawful orders or mandates."

(b) "Clear and convincing evidence" means "that kind of proof which must persuade the members of the adjudicatory panel that the truth of a contention is highly probable."

(c) "Commission" means "the Commission on Judicial Conduct and Ethics."

(d) "Commission chair" means "the person who presides over the full commission and includes a commission vice chair when acting in the capacity as the commission chair."

(e) "Conduct prejudicial to the administration of justice that brings the judicial office into disrepute" includes, without limitation, "a violation of the Wyoming Code of Judicial Conduct."

(f) "Criminal misconduct" means "a conviction arising from violation of any local, state or federal criminal law, statute, regulation, rule, or ordinance."

(g) "Disability" means "a mental or physical condition, or mental and physical condition combined, that seriously interferes with a judge's performance of duties and is, or is likely to become, permanent."

(h) "Disciplinary counsel" means "any person appointed by the Commission or a panel to gather and present evidence before the commission or a panel and perform other duties assigned by the commission or a panel pursuant to these rules."

(i) "Formal proceedings" refers to the initiation of the process by which allegations against a judge are to be made, heard, and determined by an adjudicatory panel.

(j) "Hearing officer" is the member of a panel selected or appointed to conduct any hearing or other proceeding.

(k) "Judge" means "any person or judicial officer performing judicial functions or exercising judicial powers in the judicial branch of Wyoming government, including, but not limited to, justices of the Wyoming Supreme Court, district court judges and commissioners, circuit court judges and magistrates, and municipal judges and alternate municipal judges, whether serving full time or part time, including a retired judge, commissioner or magistrate who has been given a general or special appointment to hear cases by the Wyoming Supreme Court."

(l) "Judicial misconduct" means "any action occurring during the judge's tenure, that constitutes, including, but not limited to, the following:

(1) willful misconduct in office;

- (2) willful or persistent failure to perform duties;
  - (3) habitual intemperance to include alcohol or substance abuse; or
  - (4) conduct prejudicial to the administration of justice that brings the judicial office into disrepute."
- (m) "Judicial tenure" means "any service by a judge in any judicial capacity at any time."
- (n) "Mail" and "mailed" include ordinary mail and personal delivery.
- (o) "Oath" is synonymous with "affirmation," and "swear" is synonymous with "affirm."
- (p) "Panel" refers to an investigatory panel or an adjudicatory panel.
- (q) "Presiding officer" means "the presiding member of an investigatory or adjudicatory panel making administrative decisions."
- (r) "Registered mail" means "either registered or certified mail, deposited with the United States Postal Service, with postage prepaid and with a request for a return receipt."
- (s) "Rules" means "the Rules Governing the Commission on Judicial Conduct and Ethics."
- (t) "Shall" is mandatory and "may" is permissive.
- (u) "Verify" means "to confirm or substantiate by oath or affirmation."
- (v) "Wyoming Supreme Court" means "the Wyoming Supreme Court" or "Special Wyoming Supreme Court as set forth in Wyo. Const. art. 5, § 6."

**Rule 3. Selection of judges as commission members.**

- (a) Wyoming judges of the district courts shall select two of their number as members of the Commission. The judges of the district courts shall meet, as necessary, on or before January 31st of each year so as to ensure that appointments to the Commission are current and consistent with Wyo. Const. art. 5, § 6.
- (b) Wyoming judges of the circuit courts shall select one of their number as a member of the Commission. The judges of the circuit courts shall meet, as

necessary, on or before the 31st of January of each year so as to ensure that appointments are current and consistent with Wyo. Const. art. 5, § 6.

(c) The Commission shall inform the presiding officer of the District Judges Division of the Judicial Council and the presiding officer of the Circuit Court Judges Division of the Judicial Council of vacancies on the Commission of judge members and new members shall thereafter be selected or appointed by the appropriate body within 30 days of the notification.

**Rule 4. Commission members appointed by the Wyoming State Bar and the Governor of Wyoming.**

(a) The Wyoming State Bar shall appoint three of its numbers as members of the Commission. Upon notification of a vacancy of a member of the Commission appointed by the bar, as provided for in these rules, the bar shall fill vacancies as necessary.

(b) The Governor of Wyoming shall appoint six electors of the state who are not active or retired judges or attorneys, which appointments shall be confirmed by the Wyoming Senate. Upon notification of a vacancy of a member of the Commission appointed by the governor, as provided for in these rules, the governor shall fill vacancies as necessary.

**Rule 5. Removal of members of the Commission.**

Upon a showing of good cause, sufficient notice, and after an opportunity for hearing before the Commission, a member or members of the Commission may be removed by a majority vote of the members of the Commission, except the member or members of the Commission affected by that vote. The governor may remove any member he appoints as provided in Wyo. Stat. Ann. § 9-1-202 (Lexis 2005); members elected by the judges may be removed by majority vote, respectively, of all full-time, active district judges or full-time, active circuit court judges; and the Wyoming State Bar may remove any member it appoints.

**Rule 6. Organization and authority of Commission.**

(a) Commission; commission chair; commission vice chair; investigatory and adjudicatory panels. The full Commission shall select one of its members to serve as commission chair, and one of its members to serve as commission vice chair in the event the commission chair is unable to serve because of absence, illness, conflict, recusal, or other reason. The commission chair may divide the full Commission into investigatory panels of three or more members and

adjudicatory panels of three or more members. The commission chair shall prescribe the duration and time of panel membership. The investigatory and adjudicatory panels shall include members from each category of membership-- lawyer, judge, and elector. Membership on the panels shall rotate in a manner determined by the Commission, provided that no member shall sit on both the investigatory and adjudicatory panel in the same proceeding. The full Commission shall meet periodically as determined by the commission chair to consider administrative and procedural matters and shall meet at the call of the commission chair on an ad hoc basis for disposition hearings.

(b) Commission chair. The commission chair shall preside over meetings and hearings of the full Commission. In the event formal proceedings are commenced, the commission chair shall appoint a member (who may be the commission chair) to serve as the hearing officer of the adjudicatory panel. The commission chair shall from time to time designate presiding officers of all panels.

(c) Presiding officer. The presiding officer of each panel shall schedule, convene and preside over panel hearings and shall appoint a member of the panel (who may be the presiding officer) to serve as the hearing officer of any hearing or other proceeding of the panel.

(d) Authority to administer oaths and issue subpoenas. In addition to those persons authorized to administer oaths in accordance with law, the commission chair, the commission vice chair, a presiding officer, and a hearing officer are authorized to administer oaths or affirmations to all witnesses appearing before the Commission or any commission panel, or at any proceeding or hearing. The commission chair, commission vice chair, a presiding officer, and a hearing officer have the authority to issue subpoenas in the name of the Commission as provided by these rules.

(e) Powers and duties of the Commission.

(1) The Commission shall have the duty and broad authority (which may be delegated as provided in these rules or rules adopted by the Commission) to:

(A) adopt its own rules of procedure for discipline and disability proceedings not inconsistent with these rules and subject to the approval of the Wyoming Supreme Court, except in such instances or situations where the commission chair declares, as approved by a majority vote of all members of the Commission, that an emergency exists which necessitates the issuance of a special rule or special rules;

(B) adopt internal policies and procedures of operation, adopt official forms, and conduct its administrative functions as may be deemed, from time to time, appropriate by a majority vote of members of the Commission;

(C) hire and retain an executive director, disciplinary counsel and other staff;

(D) conduct investigations and review the recommendations of disciplinary counsel after investigation and authorize investigations, commence formal proceedings, conduct hearings on formal proceedings or dismiss a complaint;

(E) rule on prehearing motions, conduct hearings, make findings, conclusions and recommendations to the Wyoming Supreme Court for sanctions, including imposition of monetary sanctions as deemed appropriate, or dismiss a case, pursuant to these rules;

(F) consider and implement such other forms of discipline, including, but not limited to, temporary discipline or interim suspension as provided for in these rules, or permanent discipline as provided for in these rules;

(G) appoint masters in appropriate cases, review the findings of the masters, and make findings, conclusions, and recommendations to the Wyoming Supreme Court for sanctions, including imposition of monetary sanctions as deemed appropriate, or dismiss a case, pursuant to these rules;

(H) maintain the Commission's records;

(I) prepare the Commission's budget for its approval and administer the funds;

(J) notify the appropriate appointing authority of vacancies on the Commission;

(K) prepare an annual report of the Commission's activities and maintain statistics concerning the operation of the Commission and make available the report and statistics which are not confidential;

(L) inform the public of the existence and operation of the judicial discipline system, including the Commission's address and telephone number;

(M) perform such other supervisory functions as the Wyoming Supreme Court may from time to time direct;

(N) make assignment to investigatory and adjudicatory panels;  
and

(O) refer potential violations of law by a judge or by any other individual or entity, or evidence thereof, to the appropriate authorities.

(f) Powers and duties of investigatory panel.

(1) The investigatory panel shall have the duty and broad authority to:

(A) review statements or complaints received by the Commission concerning allegations of judicial misconduct, criminal misconduct, civil misconduct, or disability; conduct reviews and make inquiries; conduct examinations; impose temporary discipline or interim suspension as provided for in these rules; refer violations of any of these rules concerning confidentiality to appropriate authorities; refer criminal violations to appropriate prosecuting authorities; issue subpoenas; conduct hearings and other proceedings; make dismissals; issue letters of correction; issue or recommend deferred discipline agreements; issue stipulated private censures; and refer probable cause findings against a judge to an adjudicatory panel for formal proceedings;

(B) evaluate all information or allegations reaching the attention of the Commission from any source that reasonably gives rise to the need for further inquiry or investigation;

(C) commence investigations on its own motion on matters concerning alleged disability, judicial misconduct, criminal misconduct, or civil misconduct falling within the jurisdiction of the Commission;

(D) appoint disciplinary counsel, if needed, to proceed with investigation, deferred discipline agreement, or formal proceedings;  
and

(E) maintain records and files confidentially in accordance with these rules and transmit files to the adjudicatory panel for formal proceedings as appropriate.

(g) Powers and duties of adjudicatory panel.

(1) The adjudicatory panel shall have the duty and broad authority to:

(A) appoint disciplinary counsel, if needed, to proceed with investigation, deferred discipline agreement, or formal proceedings; evaluate all information or allegations reaching the attention of the adjudicatory panel or from any source that reasonably gives rise to the need for further inquiry or investigation; maintain records and files confidentially in accordance with these rules; review notices of formal proceedings and amended notices of formal proceedings concerning allegations of judicial misconduct, criminal misconduct, civil misconduct, or disability; conduct reviews and make inquiries; impose temporary discipline or interim suspension as are provided for in these rules; refer violations of any of these rules concerning confidentiality to appropriate authorities; refer criminal violations to appropriate prosecuting authorities; issue subpoenas; conduct hearings and other proceedings; issue letters requiring remedial action; issue or recommend deferred discipline agreements; issue stipulated private censures; rule on prehearing motions; conduct hearings and other proceedings related to formal proceedings; make findings, conclusions and recommendations to the Wyoming Supreme Court; or dismiss a case;

(B) adopt internal policies and procedures for convening and conducting adjudicatory hearings; and

(C) conduct adjudicatory hearings and make adjudicatory findings.

(h) Expenses. Members shall be reimbursed for reasonable and necessary expenses incurred pursuant to their duties.

**Rule 7. Staff for Commission and disciplinary counsel.**

(a) The Commission shall employ an executive director who shall receive and process inquiries, maintain custody of the Commission's records and files, transmit files between the Commission and its panels at the direction of the commission chair or as otherwise provided by these rules, and perform such other duties as may be assigned by the Commission. The Commission may employ other staff to assist in the performance of duties assigned to the Commission.

(b) The Commission may retain or contract for services with an attorney to serve as disciplinary counsel. Disciplinary counsel may not serve in a judicial capacity or maintain a practice of law that would conflict with the duties of disciplinary counsel. Disciplinary counsel shall be bound by the same rules of confidentiality as the Commission. Disciplinary counsel shall make no representations, statements, promises, or agreements to any person or entity other than as provided by these rules or without the express authority of the presiding officer of an investigatory panel or adjudicatory panel, as the case may be, concerning any matter for which disciplinary counsel is retained and hired. Disciplinary counsel shall have the duty and authority to:

- (1) conduct investigations upon request of an investigatory panel;
- (2) file and prosecute formal proceedings when directed to do so by an investigatory panel; and
- (3) perform other duties as may be assigned, including, but not limited to, presentation of information or evidence at any hearings or other proceedings before an investigatory panel or an adjudicatory panel, preparation of findings, recommendations, stipulations, settlement agreements, and orders of discipline.

**Rule 8. Quorum of Commission.**

Except as otherwise provided in these rules, a quorum for the transaction of commission business shall be two-thirds of the Commission members eligible to participate in the matter being considered, but in no event fewer than four members, and the vote of the majority of the Commission at any meeting with a quorum present shall be the act of the Commission. Commission members may participate in any meeting by telephone except that commission members who are part of the adjudicatory panel shall appear in person at the adjudicatory hearing. If there are an insufficient number of members eligible to decide any case before the Commission, the commission chair shall make written request to the appointing authority of recused or ineligible members to appoint temporary replacement commission members for that case. If the replacements are not named by the appointing authority within 15 days, the commission chair may appoint the temporary replacement members from the same category as the recused or ineligible member.

**Rule 9. Interested member of Commission; ex parte contacts.**

- (a) A judge who is a member of the Commission shall not participate as such member in any proceedings involving the judge's own discipline, removal, or retirement.

(b) No member of the Commission shall serve in the capacity as a member of both the investigatory panel and the adjudicatory panel in the same proceeding.

(c) Members of the Commission shall recuse themselves in any matter in which recusal would be required of a judicial officer under the Wyoming Code of Judicial Conduct. Once a member of the Commission is recused from a proceeding for any reason, such member shall not subsequently be permitted to consider any aspect of such proceeding.

(d) Members of the Commission shall not engage in ex parte communications regarding a case with the judge, judge's counsel, disciplinary counsel, or any witness, except that before making a determination to file formal proceedings in a case, a panel may communicate with the disciplinary counsel as may be required to perform its duties in accordance with these rules. For administrative purposes only, the commission chair or a presiding officer or hearing officer of a panel may confer with disciplinary counsel and the judge's counsel or the judge, if pro se. Members of the Commission are permitted to engage in ex parte communications with persons seeking information from them only to the extent that such persons are provided with a means of contacting the Commission, obtaining a copy of these rules, or informing such persons or entities of the dismissal of a case or that appropriate action was taken by the Commission, as permitted by these rules. Following the filing of formal proceedings, members of the Commission shall not engage in ex parte communications regarding a case with the judge, counsel for the judge, disciplinary counsel, or any witness, except that staff may communicate with disciplinary counsel and others as required to perform their duties in accordance with these rules. Anything to the contrary notwithstanding, the commission chair, the investigatory panel, or the presiding officer of a panel may communicate with disciplinary counsel; and the commission chair, the investigatory panel, the presiding officer of a panel, and the hearing officer of the adjudicatory panel may communicate with disciplinary counsel, the judge, or counsel for the judge only as expressly permitted by these rules.

**Rule 10. Proceedings confidential; exceptions to confidentiality; public release of information.**

(a) Proceedings. Unless otherwise permitted by these rules, or unless revealed in public documents or a public hearing, all proceedings before the Commission and all information, communications, materials, papers, files, and transcripts, written or oral, received or developed by the Commission in the course of its work, shall be confidential. No member of the Commission or its staff and no employee or agent of the Commission, disciplinary counsel and disciplinary counsel's staff, no attorney, and no testifying witness shall disclose such proceeding, information, communications, materials, papers, files, or

transcripts, except in the course of official duty or as otherwise authorized by these rules. Any violation of the provision for confidentiality shall constitute an act of contempt and be punishable as such. Any violation by any person of the requirements of confidentiality shall be dealt with in accordance with these rules, and the Commission may refer any violation to the appropriate tribunals, authorities, agencies, commissions, or bodies. A record filed by the Commission with the Wyoming Supreme Court loses its confidential character upon its filing. In the event of a private censure, except when the complaint was initiated by a member of the Commission or by the Commission, the complainant shall be advised in general terms that appropriate corrective action has been taken. In the event that a complaint has been dismissed, except when the complaint was initiated by a member of the Commission or by the Commission, the complainant shall be advised that the matter has been closed. The Commission may, in its discretion, release statistical information that does not identify judges whose cases are confidential. The deliberations of the Commission, whether oral or written, shall remain confidential.

(b) Exceptions to confidentiality. The Commission may refer potential violations of law by a judge or by any other individual or entity, or evidence thereof, to the appropriate authorities. The Commission may disclose information to any committee, commission, agency, or body within or outside the State of Wyoming empowered to investigate, regulate, or adjudicate matters incident to the legal profession (excluding matters involving criminal conduct); however, the Commission may send the judge a copy of all documents or other matters disclosed. The Commission may disclose information upon inquiry by any state or federal appointment authority, committee, commission, agency, or body empowered to conduct investigations in connection with the selection or appointment of judges.

(c) Public release of information. In any case in which the subject matter of an investigation, proceeding, or determination becomes public through independent sources or through a waiver of confidentiality by the judge, or in extreme circumstances when the confidence of the public in the judiciary is involved, or when the interests of the judge involved would be adversely affected, or when the interests of the Commission would be adversely affected, the Commission may issue statements as deemed appropriate in order to confirm the pendency of an investigation, to clarify the procedural aspects of the proceedings, to explain the right of the judge to a fair hearing without pre-judgment, and to state that the judge denies the allegations. The statement shall be first submitted to the judge involved for comment or criticism prior to its release, but the Commission, in its discretion, may release the statement as originally prepared or as the Commission deems appropriate.

(d) Notices, pleadings, documents, correspondence, and communications. All notices, pleadings, documents, letters, and papers mailed or otherwise

transmitted in any form directed to a judge, counsel for a judge, members of the Commission, staff of the Commission, disciplinary counsel, or any other person or entity pursuant to these rules shall be enclosed in a cover marked "Personal and Confidential".

(e) Oath of witnesses. Every witness in every proceeding under these rules shall be sworn to tell the truth and not to disclose the existence of the proceeding or the identity of the judge until the proceeding is no longer confidential under these rules. Violation of the oath shall be an act of contempt and punishable as such.

(f) Review of file contents. Investigatory panel members shall have the authority to investigate facts through letters, information obtained by subpoena and other means of inquiry directed to the complainant, the judge, court officials, attorneys and all others. The investigatory panel may, in its discretion, share the information and responses with the complainant, the judge, and the parties' attorneys. The Commission is not required to follow any request by the complainant, judge, or complainant's attorney to withhold dissemination of information provided in response to a confidential investigatory panel inquiry. Otherwise, the confidentiality of these matters as provided by these rules shall apply.

**Rule 11. Defamatory material.**

The filing of papers with or the giving of testimony before the Commission shall be privileged in any action for defamation. A writing that was privileged prior to its filing with the Commission does not lose its privilege by the filing. A record filed by the Commission in the Wyoming Supreme Court continues to be privileged.

**Rule 12. Jurisdiction; temporary discipline or interim suspension; subpoenas.**

(a) Commission. The Commission or its panels shall receive, investigate, hear, and adjudicate allegations of judicial misconduct, criminal misconduct, civil misconduct, or disability; impose temporary discipline or interim suspension as provided for in these rules; approve discipline; and make recommendations to the Wyoming Supreme Court for appropriate discipline, including the imposition of monetary sanctions, censure, removal or retirement of a judge.

(1) The Commission may recommend retirement of a judge for disability.

(2) The Commission may recommend censure or removal of a judge upon a finding that a judge has engaged in judicial misconduct, criminal misconduct or civil misconduct.

(3) The Commission or a panel may impose discipline in the form of private censure and such an imposition of discipline need not be recommended to or approved by the Wyoming Supreme Court.

(b) Investigatory panel. The investigatory panel shall, on behalf of the Commission, have the broad authority as provided in these rules.

(c) Adjudicatory panel. The adjudicatory panel shall, on behalf of the Commission, have jurisdiction to conduct formal proceedings upon a receipt of a determination from the investigatory panel that formal proceedings should be instituted. The adjudicatory panel shall make findings and adjudications concerning allegations of judicial misconduct, criminal misconduct, civil misconduct and disability, and:

(1) where none is proven by clear and convincing evidence, shall dismiss the case; or

(2) where proven by clear and convincing evidence, shall make an adjudication and submit findings to the full Commission for disposition.

(d) Temporary discipline or interim suspension. If there is probable cause to believe that the judge poses an imminent threat of substantial harm to the public or any other person or any entity, a panel may order such temporary discipline or interim suspension as may be appropriate under the circumstances. Any such order shall set forth the full factual basis for the temporary discipline or interim suspension and shall be effective immediately upon issuance. The order shall be served upon the judge or upon the attorney for the judge as provided by these rules. The judge shall have 20 days from the date of service of the order to request dissolution or modification of the order. The request and factual basis for dissolution or modification of the order shall be verified, in writing, and served upon the panel issuing the order.

(e) Disposition. Upon a finding of judicial misconduct, criminal misconduct, civil misconduct or disability of a judge, the full Commission shall convene and shall have jurisdiction to make and transmit appropriate findings and recommendations for censure, removal or retirement, and imposition of monetary sanctions, to the Wyoming Supreme Court or impose discipline in the form of private censure, including, but not limited to, imposition of monetary sanctions where appropriate.

(f) A judge, clerk, court employee, member of the bar, or other officer of the court shall comply with a request made by the Commission, the commission chair, the presiding officer of an investigatory panel, the presiding officer or hearing officer of an adjudicatory panel, or disciplinary counsel in aid of any investigation or any proceeding involving any judge.

(g) Issuance, service, and return of subpoenas; enforcement of subpoenas.

(1) Every subpoena shall:

(A) be styled "The State of Wyoming";

(B) state that the proceeding is pending before the Commission or a panel of the Commission;

(C) not name the judge who is the subject of the matter pending before the Commission or a panel;

(D) be signed by the commission chair, a presiding officer or hearing officer of a panel, and the date of its issuance shall be noted thereon;

(E) be addressed to a person designated by the issuing officer to make service thereof;

(F) command each person or entity to whom it is directed to attend and give testimony by deposition or at a hearing, or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person or entity, or to permit inspection of premises, at a time and place therein specified; and,

(G) set forth the protections to each person or entity as provided by these rules for persons or entities which are the subject of a subpoena.

A command to produce evidence or to permit inspection may be joined with a command to appear at a hearing or at deposition, or may be issued separately.

(2) A subpoena may be issued to command attendance or production at a hearing without notice to other parties. A subpoena to command attendance at deposition, or to produce and permit inspection and copying of designated books, documents or tangible things before hearing, or to permit inspection of premises before hearing, may be issued after or

concurrently with reasonable notice, served in the manner prescribed by these rules, to any affected parties of the deposition, production or inspection.

(3) The commission chair, a presiding officer or hearing officer of a panel may, on the request of a panel or at the written request of the judge or of disciplinary counsel, issue a subpoena for attendance at a hearing or proceeding of any witness or witnesses or for the production of any documents or other tangible thing.

(4) A subpoena may be served by the sheriff, by a deputy sheriff, or by any other person who is not a party and is not a minor, at any place within the State of Wyoming. Service of a subpoena upon a person or entity named therein shall be made by delivering a copy thereof to such person or entity and, if a person's attendance is commanded, by tendering to that person the statutory witness fees for one day's attendance and the mileage allowed by law. Any witness subject to a subpoena residing in a county other than that in which the hearing is to be held shall be paid, after the hearing, the statutory per diem allowance for state employees for each day or part thereof necessarily spent by such witness in traveling to and from the place of hearing and in attendance at the hearing. Subpoenas may be executed and returned at any time, and shall be served by delivering a copy of such subpoena to the witness or entity.

(5) A subpoena for hearing may require the person subpoenaed to appear at the hearing irrespective of the person's place of residence, place of employment, or where such person regularly transacts business in person.

(6) A person commanded by subpoena to appear at a deposition may be required to attend only in the county wherein that person resides or is employed or regularly transacts business in person, or at such other convenient place as is fixed by the officer issuing the subpoena. A nonresident of the state may be required to attend only in the county wherein that nonresident is served with a subpoena or at such other convenient place as is fixed.

(7) The officer responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person or entity subject to that subpoena.

(A) A person or entity commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in

person at the place of production or inspection unless commanded to appear for deposition or hearing.

(B) A person or entity commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance, if such time is less than 14 days after service, serve upon the Commission or a panel written objection to inspection or copying of any or all of the designated materials or of the premises.

(C) On timely motion, the Commission or a panel shall quash or modify the subpoena if it:

- (i) fails to allow reasonable time for compliance;
- (ii) requires, in the case of a deposition or production prior to hearing, a person to travel outside that person's county of residence or employment or a county where that person regularly transacts business in person; or
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
- (iv) subjects a person or entity to undue burden.

(8) A person or entity responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(9) When information or material subject to a subpoena is withheld on a claim that it is privileged or subject to protection, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced.

(10) The Commission, on its own or by and through disciplinary counsel, may bring an action to enforce a subpoena in the district court of any county in which the hearing or proceeding is conducted or in which the person or entity subject to a subpoena resides or is found.

**Rule 13. Investigatory panel.**

(a) **Complaints.** All complaints shall be in writing and may be initiated by a member of the Commission based upon any source that may be deemed

reasonably reliable. Complaints shall be verified and addressed to the Commission, except when initiated by commission inquiry. By presenting to the Commission (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief formed after an inquiry reasonable under the circumstances:

- (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
- (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(b) Investigation. Upon receiving a complaint alleging facts indicating that a judge has engaged in judicial misconduct, criminal misconduct, civil misconduct, or that the judge has a disability, the investigatory panel shall review the information and shall act as follows:

- (1) Dismissal. It may forthwith dismiss unfounded, frivolous or trivial complaints.
- (2) Investigation. For complaints not dismissed forthwith, the investigatory panel shall make an investigation or direct disciplinary counsel to make an investigation to determine whether or not the complaint warrants further examination. In making an investigation, the investigatory panel or disciplinary counsel may obtain and consider any information deemed pertinent.
- (3) Physical or mental evaluation. If an investigation indicates that the physical or mental health of the judge is in issue, the investigatory panel may require that the judge submit to physical and/or mental examinations of the judge by independent examiners. The results of the examination shall be transmitted to the judge and to the presiding officer for

consideration by the panel. Service of the results of examination shall be in accordance with these rules. The failure of the judge to testify or to submit to an examination ordered by a panel may be considered, unless it appears that such failure was due to circumstances beyond the judge's control.

(4) If the investigation does not disclose sufficient cause to warrant further proceedings, the case shall be dismissed. In such event, the complainant shall be notified that the case is closed.

(5) If after investigation, the investigatory panel finds reasonable cause to believe that the judge engaged in judicial misconduct, criminal misconduct, civil misconduct, or that the judge has a disability, then formal proceedings shall be instituted and the file shall be referred to the adjudicatory panel.

(c) Commission initiated investigations. Upon receiving a complaint by a member of the Commission, the commission chair may appoint an investigatory panel which may make, or require disciplinary counsel to make, an investigation on the basis of information coming to the Commission's attention from other sources that, if substantiated, would constitute judicial misconduct, criminal misconduct, civil misconduct, or that the judge has a disability.

(d) Notice of investigation. When the judge is notified of an investigation or ordered to submit to an examination, such notice or order shall be given by registered mail addressed to the judge at the judge's chambers and the judge's last known residence. If the investigatory panel or disciplinary counsel are informed that the judge is represented by counsel, then counsel for the judge shall be notified of any investigation or examination by mail addressed to counsel in lieu of notifying the judge.

**Rule 14. Disposition of subsequent complaints.**

(a) When the Commission is presented with a complaint which is the same or substantially similar to a previous complaint from the same complainant against the same judge, the matter shall be presented to the commission chair. The commission chair shall consider whether the subsequent complaint presents new issues of fact material to judicial conduct and ethics not previously addressed. If the subsequent complaint presents no such new issues, then the matter may be disposed of summarily by the commission chair.

(b) When the Commission is presented with a complaint or when an investigatory panel or disciplinary counsel learns of conduct by a judge which does not in and of itself give probable cause that judicial misconduct, criminal

misconduct, or civil misconduct has occurred, but is of such nature which indicates that a potential pattern of judicial misconduct, criminal misconduct, or civil misconduct may be indicated, the commission chair may assign the matter to an investigatory panel.

**Rule 15. Closure of case.**

When a complaint has been dismissed, the case is closed. No information concerning a closed case shall be released to anyone other than commission members, except as may be otherwise authorized in these rules. When a complaint has been dismissed, the complainant shall be notified that the case is closed.

**Rule 16. Settlement.**

A judge accused of judicial misconduct, criminal misconduct, or civil misconduct or who is alleged to have a disability who wishes to propose a settlement of a complaint, complaints, or formal proceedings, whether or not admitting judicial misconduct, criminal misconduct, civil misconduct, or disability, may present a settlement proposal to disciplinary counsel, or if no disciplinary counsel has been appointed, to the presiding officer of a panel. If no presiding officer of the adjudicatory panel has been appointed, it may be presented to the commission chair. Disciplinary counsel or the presiding officer of the adjudicatory panel or the commission chair have no authority to settle any case, but may comment upon a judge's proposal. Any proposal may be referred to the full Commission which may accept it, reject it, or propose an alternative, with or without a hearing. Disciplinary counsel may propose a settlement to the judge after consultation and approval of the presiding officer of the investigatory panel or the presiding officer of the adjudicatory panel if formal proceedings have been commenced which, if acceptable to the judge, may be referred to the Commission. A judge who proposes or agrees to a settlement proposal waives any complaint that consideration of settlement compromises the Commission or any of its members in any proceedings.

**Rule 17. Formal proceedings; adjudicatory panel selection; designation of presiding officer and hearing officer; notice.**

(a) Upon the receipt of a written referral for the institution of formal proceedings from any investigatory panel, the commission chair shall select three or more members of the Commission (who were not involved in serving on the investigatory panel) to serve on an adjudicatory panel for the particular case. The commission chair shall further designate a member of the panel to act as the presiding officer. The presiding officer of the adjudicatory panel shall select a hearing officer. The presiding officer of the adjudicatory panel may act as the hearing officer.



could not be had, service may be made upon the judge by mailing, by registered mail, a copy of the notice addressed to the judge at the judge's chambers and a copy thereof addressed to the judge's last known residence. If disciplinary counsel is informed that the judge is represented by counsel, then counsel for the judge shall be notified by mail addressed to counsel in lieu of notifying the judge. Notice of supplementation of allegations made against the judge shall be served upon the judge by registered mail addressed to the judge at the judge's chambers and the judge's last known residence. If disciplinary counsel is informed that the judge is represented by counsel, then counsel for the judge shall be notified of any supplementation of allegations made against the judge by mail addressed to counsel in lieu of notifying the judge.

(f) Answer. Within 20 days after service of the notice of formal proceedings, the judge may file with the Commission a legible answer which shall be verified. The judge shall be given reasonable time by the presiding officer or hearing officer of the adjudicatory panel to file a verified amended written answer to any supplemental allegations made against the judge, if any.

(g) Other amendments. At any time prior to its determination, the presiding officer or hearing officer of the adjudicatory panel may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the judge shall be given a reasonable time both to answer the amendment and to prepare and present a defense against the matters alleged.

**Rule 18. Powers and duties of presiding officer or hearing officer of adjudicatory panel.**

The presiding officer or hearing officer of the adjudicatory panel shall have the following powers and responsibilities:

- (a) administer oaths and affirmations;
- (b) conduct such proceedings or conferences as may be necessary, set and establish dates for exchange of information, conferences, and hearings, issue subpoenas, and receive, hear and determine all motions;
- (c) establish the terms, conditions and limitations of discovery and rule upon all discovery motions, including those pertaining to depositions, and when requested by disciplinary counsel, the judge, counsel for the judge or a member of the adjudicatory panel, to preside over a deposition;

- (d) open and officially close any hearing or other formal proceeding and preside over the hearing and regulate its proceedings;
- (e) rule upon the admissibility of all evidence, and receive all relevant evidence; and
- (f) sign the written decision and order at the conclusion of the proceedings and sign all other orders necessary to facilitate the orderly disposition of the case.

**Rule 19. Hearing.**

- (a) Setting time and place before Commission. Upon the filing of an answer or upon the expiration of the time for its filing, the presiding officer or hearing officer of the adjudicatory panel shall order a hearing to be held, setting a time and place for the hearing and giving notice of such hearing by registered mail to the judge at least 30 days prior to the date set. In the event that the hearing must be rescheduled and/or held at a different place than was originally noticed, the presiding officer or hearing officer of the adjudicatory panel shall give reasonable notice to the judge, counsel, and disciplinary counsel consistent with due process rights.
- (b) Issuance, service, and return of subpoenas. The presiding officer of the adjudicatory panel shall, at the written request of the judge or disciplinary counsel or other authorized person presenting the case in support of the allegations made against the judge, issue a subpoena for any witness or witnesses or for the production of any documents or other tangible thing in accordance with these rules.
- (c) Proceeding on time; absence of answer or appearance. At the time and place set for hearing, the adjudicatory panel shall proceed with the hearing whether or not the judge has filed an answer or appears at the hearing.
- (d) Presentation of case; failure to answer, appear, or testify. Disciplinary counsel has the burden of proving, by clear and convincing evidence, the facts justifying discipline in conformity with the averment of the formal statement of allegations made against the judge. Disciplinary counsel shall present the case in support of the allegations made against the judge set forth in the notice of formal proceedings together with such supplementation of allegations made against the judge as have been made and noticed prior to the date of the hearing. The failure of the judge to answer or to appear at the hearing shall not, standing alone, be taken as evidence of the truth of the facts alleged to constitute grounds for suspension, censure, removal, or retirement. The failure of the judge to testify or to submit to an examination ordered by a panel may be considered,

unless it appears that such failure was due to circumstances beyond the judge's control.

(e) Record of hearing. The proceedings at the hearing shall be reported verbatim, stenographically or by any other means determined appropriate by the presiding officer or hearing officer of the adjudicatory panel.

(f) Number of adjudicatory panel members at hearing. No fewer than three members shall be present when the evidence is produced.

(g) Evidence; rulings thereon. The Wyoming Rules of Evidence applicable to civil proceedings apply at the hearing. At a hearing before the adjudicatory panel, legal evidence only shall be received, and oral evidence shall be taken only on oath or affirmation. The hearing officer of the adjudicatory panel shall determine all evidentiary and procedural matters at the hearing.

(h) Use of allegations from dismissed cases. If a complaint has been dismissed, the allegations made in that complaint shall not be used for any purpose in any judicial disciplinary proceedings against the judge unless it forms a basis of an allegation or set of allegations indicating a pattern of misconduct or disability. If additional information becomes known to disciplinary counsel regarding a complaint that has been dismissed before the filing of formal proceedings, the allegations may be reinvestigated at the direction of an investigative panel.

(i) Depositions; use as evidence. Depositions, either on oral examination or on written interrogatories, of witnesses who reside out of the state or whose personal attendance at the hearing cannot, for good reason, be procured, may be taken and used in evidence upon application to and order of the presiding officer or hearing officer of the adjudicatory panel. Such order may be made on stipulation of the parties or after hearing on reasonable notice.

**Rule 20. Discovery.**

(a) Prehearing conference. Within 30 days of the date when the filing of the answer was due, the presiding officer or hearing officer of the adjudicatory panel shall schedule a prehearing conference, which shall be recorded by such means as the presiding officer or hearing officer shall determine, with disciplinary counsel and with the judge or counsel for the judge. At the prehearing conference, the presiding officer or hearing officer shall set dates by which disciplinary counsel and the judge or counsel for the judge shall exchange information as to identification of witnesses and relevant documents as provided for in these rules. The date and place of the hearing may be set at the prehearing conference. The presiding officer or hearing officer shall determine

whether and to what extent any prehearing matter should be heard in a teleconference or submitted for decision in writing without a hearing or teleconference.

(b) Witnesses. By the date set by the presiding officer or hearing officer of the adjudicatory panel, disciplinary counsel and the judge or counsel for the judge shall exchange the names and addresses of all persons known to have knowledge of the relevant facts. Disciplinary counsel or the judge or counsel for the judge may withhold such information only with permission of the presiding officer or hearing officer of the adjudicatory panel who can authorize withholding of the information only for good cause shown, taking into consideration the materiality of the information possessed by the witness and the position the witness occupies in relation to the judge. The presiding or hearing officer's review of the withholding request is to be in camera, but disciplinary counsel must advise the judge or counsel for the judge of the request without disclosing the subject of the request. The presiding officer or hearing officer of the adjudicatory panel shall set a date for the exchange of the names and addresses of all witnesses the parties may intend to call at the hearing. Disciplinary counsel and the judge or counsel for the judge may take depositions only of witnesses to be called at the hearing and other witnesses who are unavailable to testify. Depositions of other persons may be taken only with permission of the presiding officer or hearing officer of the adjudicatory panel and only for good cause shown. Any witness testifying at a deposition shall be informed of the confidentiality of the proceedings and such witness shall be required to swear or affirm as part of the oath that such witness shall not disclose the existence of the proceeding, the identity of the judge, or the subject of the testimony or evidence.

(c) Other evidence. By the date set by the presiding officer or hearing officer, disciplinary counsel and the judge or counsel for the judge shall exchange:

(1) non-privileged evidence relevant to the formal allegations made against the judge including any supplementation of allegations made against the judge, documents to be presented at the hearing, witness statements and summaries of interviews with witnesses who may be called at the hearing; and

(2) other material only upon good cause shown to the presiding officer or hearing officer of the adjudicatory panel;

(d) Duty of supplementation. Both parties have a continuing duty to supplement information required to be exchanged under this rule.

(e) Completion of discovery unless extended by the presiding officer or hearing officer. All discovery shall be completed by the date determined by the presiding officer or hearing officer of the adjudicatory panel.

(f) Failure to disclose. The adjudicatory panel may preclude either party from calling a witness at the hearing if the party has not provided the opposing party with the witness's name and address, any statements, if any exist, taken from the witness or any summaries, if any exist, of any interviews with the witness.

(g) Resolution of disputes. Disputes concerning discovery shall be determined in the sole discretion of the presiding officer or hearing officer.

(h) Civil rules not applicable. Proceedings under these rules are not subject to the Wyoming Rules of Civil Procedure.

(i) Anything to the contrary notwithstanding, attorney notes or attorney work product are not discoverable. All communications of disciplinary counsel with an investigatory panel, including but not limited to disciplinary counsel's investigative report, shall be and remain confidential, and shall not be discoverable.

**Rule 21. Procedural rights of judge.**

(a) To evidence; counsel; witnesses. Once a formal proceeding has commenced, a judge shall have the right and reasonable opportunity to defend against the allegations made against the judge by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses. The judge is entitled to present evidence and cross-examine witnesses, subject to the Wyoming Rules of Evidence. The judge may retain and have the assistance of counsel at the judge's own expense. Appearance of counsel constitutes an appearance by the judge. The judge shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or produce books, documents, tangible things, and other evidentiary matters in accordance with these rules.

(b) To transcript of testimony. When a transcript of the testimony has been prepared at the expense of the Commission, a copy thereof shall, upon request, be available for purchase by the judge and counsel in connection with the proceedings. Upon payment therefor, the judge shall have the right, without any order or approval of the Commission, to have all or any testimony in the proceedings transcribed at the judge's expense.

(c) Judge incompetent. If the judge has been adjudged incompetent by a court of competent jurisdiction or if it appears to the Commission at any time during the proceedings that the judge is not competent, the Commission may appoint legal counsel unless the judge has a guardian. In the appointment of such legal counsel, consideration shall be given to the wishes of the judge's immediate family. Whenever these rules provide for serving or giving notice or sending any matter to the judge, such notice or matter shall be served, given, or sent to counsel for the judge.

**Rule 22. Hearing additional evidence.**

The Commission or a panel may order a hearing for the taking of additional evidence at any time while the matter is pending before it. The order shall set the time and place of hearing and shall indicate the matters on which the evidence is to be taken. A copy of such order shall be sent by registered mail to the judge or by mail to counsel for the judge giving reasonable notice thereof prior to the date of hearing.

**Rule 23. Order of discipline.**

(a) Admission. At any time after the filing of formal proceedings and before final adjudication, the judge may agree with disciplinary counsel and admit any or all of the formal allegations made against the judge in exchange for a stated recommendation. The agreement shall be submitted to the entire Commission which shall:

- (1) accept the agreement and submit it to the Wyoming Supreme Court, if appropriate; or
- (2) reject the agreement at which time the matter shall proceed.

(b) Rejection of agreement. If the agreement is rejected by the Commission, the admission may be withdrawn by the judge and, if withdrawn, cannot be used against the judge in any proceedings.

(c) Affidavit of consent. A judge who admits any or all of the formal allegations made against the judge shall sign an affidavit stating that:

- (1) there is presently pending a proceeding involving allegations of judicial misconduct, criminal misconduct, civil misconduct or disability;
- (2) the facts set forth in the affidavit are true;
- (3) the consent is freely, knowingly and voluntarily rendered under no improper influence and after the judge considered his or her rights under these rules and knowingly waived such rights;
- (4) the judge consents to any sanction; and
- (5) the judge agrees to accept the final decision by the Wyoming Supreme Court, if appropriate.

(d) Order of discipline. The Commission shall file the affidavit with the Wyoming Supreme Court. The affidavit shall remain confidential until it is accepted by the Wyoming Supreme Court. The Wyoming Supreme Court may

reject the recommendation and enter an appropriate order or enter the order recommended. The final order shall be based upon the formal allegations made against the judge and any admission.

**Rule 24. Final adjudication.**

(a) Final adjudication in favor of the judge. If the adjudicatory panel by majority vote fails to find judicial misconduct, criminal misconduct, civil misconduct or disability by clear and convincing evidence, then the proceedings shall be dismissed and the record shall show an adjudication in favor of the judge.

(b) Final adjudication against the judge. If the adjudicatory panel by majority vote finds judicial misconduct, criminal misconduct, civil misconduct or disability by clear and convincing evidence, then the adjudicatory panel shall set forth and transmit its findings to the entire Commission for disposition.

(c) Within a reasonable time following the hearing before the adjudicatory panel, the adjudicatory panel shall submit to the full Commission the record of proceedings, including a full transcript of the testimony and all matters received in evidence, and submit the decision setting forth the finding of facts, conclusions of law and any minority opinions. A copy of the decision shall be served on the judge or counsel for the judge.

(d) The judge is not entitled to a full evidentiary hearing before the full Commission following the submission of the record and decision by the adjudicatory panel. The judge has the right to appear, at the judge's sole election, in person, through counsel or in writing, at or prior to the full commission hearing at which the full Commission takes any action relative to the judge's case.

(e) Disposition. After receipt of an adjudicatory panel's findings against a judge, the entire Commission shall convene to determine the nature of the sanction to be imposed against the judge after affording the judge reasonable notice and a reasonable amount of time to appear before the Commission as provided by these rules. Upon a majority vote of the entire Commission, the Commission shall make its recommendation for censure, removal or retirement, including imposition of monetary sanctions, and transmit its record and recommendations forthwith to the Wyoming Supreme Court.

(f) Retirement for disability. In a proceeding involving a judge's alleged disability, if after a hearing before the Commission, a majority of the Commission members finds by clear and convincing evidence that a judge suffers from a

disability, it shall recommend that the Wyoming Supreme Court retire the judge for disability.

**Rule 25. Record of commission proceedings.**

The Commission shall keep a record of all proceedings concerning a judge. The Commission's determination shall be entered in the record and notice thereof shall be sent by registered mail to the judge. In all proceedings resulting in a recommendation to the Wyoming Supreme Court for discipline, the Commission shall prepare a transcript of the evidence and of all proceedings therein and shall make written findings of fact and conclusions of law with respect to the issues of fact and law in the proceedings. Such findings shall include a finding as to costs or fees incurred or paid by the Commission in connection with any proceedings concerning a judge.

**Rule 26. Certification of commission recommendation to Wyoming Supreme Court.**

Upon making a determination recommending the censure, retirement, or removal of a judge, including any recommendation for imposition of monetary sanctions, the Commission shall, in a timely manner, file a copy of the recommendation, certified by the commission chair, together with the transcript and the findings and conclusions and an itemization of costs and fees incurred or paid by the Commission, with the clerk of the Wyoming Supreme Court and shall concurrently send by registered mail to the judge or to the judge's counsel notice of such filing, together with a copy of such recommendation, findings and conclusions and an itemization of costs and fees incurred or paid by the Commission, if any. This constitutes a final appealable order for purposes of appellate review.

**Rule 27. Review procedure in Wyoming Supreme Court.**

(a) **Petition.** A petition to the Wyoming Supreme Court to modify or reject the recommendation of the commission for censure, removal or retirement may be filed within 30 days after the filing with the clerk of the Wyoming Supreme Court of a certified copy of the recommendation. The verified petition, in six copies, shall be based on the record, shall specify the grounds relied on, and shall be accompanied by petitioner's brief in six copies and proof of service of a copy of the petition and of the brief on disciplinary counsel and the presiding commissioner at the commission address. Within 20 days after service on the commission, disciplinary counsel shall serve and file a respondent's brief. Within 15 days after service of such brief, the petitioner may file a reply brief, of which a copy shall be served on disciplinary counsel and the presiding commissioner.

(b) Failure to file petition. Failure to file a petition within the time provided may be deemed a consent to a determination on the merits based upon the record filed by the commission.

(c) Applicable rules. The Rules of the Supreme Court of Wyoming shall apply to proceedings in the Wyoming Supreme Court for review of a recommendation of the commission, except where express provision is made to the contrary or where the application of a particular rule would be clearly impracticable, inappropriate or inconsistent.

(d) Special supreme court. Upon the occurrence of a circumstance necessitating the appointment of a special supreme court, the Wyoming Supreme Court will designate five district judges who are not members of the commission to act in the place of the supreme court for the limited purposes contemplated by Art. 5, § 6 of the Wyoming Constitution.

**Rule 28. Contempt.**

Any violation by any person of the requirements of the Commission's rules and orders shall constitute contempt and shall be punishable as such. The Commission may initiate a proceeding pursuant to Rule 42, W.R.Cr.P., before any district judge, requiring any person accused of violating the Commission's rules or orders to appear and show cause why such person should not be held in contempt.

**EXHIBIT N**

## Model Rules for Judicial Disciplinary Enforcement

### Section II. General Provisions

#### Rule 11. Confidentiality

1. Proceedings.

- (1) Before the filing and service of formal charges, all proceedings shall be confidential.
- (2) After the filing and service of formal charges, all proceedings shall be public except incapacity proceedings as provided in Rule 27.B.

2. Information.

- (1) Before the filing and service of formal charges, all information relating to a complaint that has not been dismissed shall be held confidential by the commission and disciplinary counsel and their staffs, except that the commission may disclose information:
  - (a) when the commission has determined that there is a need to notify another person to protect that person or to notify a government agency in order to protect the public or the administration of justice; or
  - (b) upon waiver in writing by the judge.
- (2) All information relating to a complaint that has been dismissed without formal charges being filed shall be held confidential by the commission and disciplinary counsel and their staffs.
- (3) Disciplinary counsel's work product, commission deliberations and records of the commission's deliberations shall not be disclosed.

#### Commentary

In the initial stages of the disciplinary case, confidentiality is necessary to protect a judge's reputation from unfounded charges and to protect witnesses from possible recriminations while a claim is being investigated.

Once the formal charges have been filed and served upon the judge, the policy emphasis shifts from confidentiality to the public's right to know. The integrity of the judicial system is better protected by an open public hearing than by a closed hearing. This is particularly true in those instances in which the conduct is publicly known and the commission proceedings are the subject of rumor and speculation. Once formal charges have been filed and served, there is no longer a danger that the charges are frivolous. It is no longer possible to protect the identity of the witnesses because their identity must be disclosed through the discovery to which the respondent is entitled.

Rule 11.B(1)(a) is intended primarily to cover the release of information the commission determines should be made known to law enforcement authorities or to the assigning authority in connection with the assignment or reactivation of a judge to judicial duties. It does not apply to information sought by appointing authorities, who may obtain information only upon waiver as provided in Rule 11.B(1)(b).

Neither the commission nor disciplinary counsel should disclose information about dismissed complaints even if a waiver has been signed by the judge who is the subject of the complaint.

Such waivers are rarely voluntary, but are signed at the direction of organizations that can withhold benefits or determine career advancement, such as admission to practice in another state, appointment to the federal bench, etc. Disclosing the existence of complaints that were considered and dismissed is unfair to the judge and undermines the work of the commission. It is unfair to allow any adverse inferences to be drawn from the mere existence of a complaint when it was not substantial enough to state a possible ground for discipline. The commission and disciplinary counsel will have greater credibility if they do not release information about dismissed complaints under any circumstances. If the judge wishes to have such information disclosed, the judge may release the information.

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