

COMMISSION ON JUDICIAL CONDUCT  
AND ETHICS

Official Record

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS

FILED

8/21/15

Wendy J. Soto

STATE OF WYOMING

Wendy J. Soto

An inquiry concerning )

The Honorable Ruth Neely )

No. 2014-27

Municipal Court Judge and )

Circuit Court Magistrate )

Ninth Judicial District )

Pinedale, Sublette County )

**CJCE's MOTION FOR PROTECTIVE ORDER**

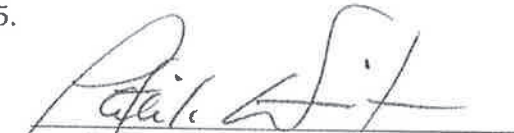
COMES NOW the Commission on Judicial Conduct and Ethics, by and through its attorney Patrick Dixon, and hereby moves the Hearing Officer for a protective order with respect to that certain W.R.Civ.P. 30(b)(6) Notice of Deposition, a copy of which is attached hereto as Exhibit 1. This motion is on the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

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

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

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

DATED this 19 day of August, 2015.

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

**CERTIFICATE OF SERVICE**

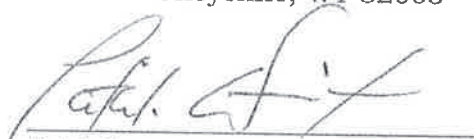
I, Patrick Dixon, do hereby certify that on the 19 day of August, 2015, I served the above and foregoing **CJCE's Motion for Protective Order** by placing a true and correct copy in the United States mail, duly postmarked and addressed to:

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

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

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

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

  
Patrick Dixon

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

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

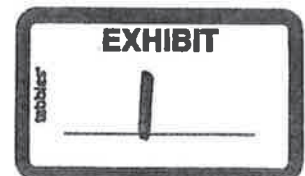
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**RESPONDENT HONORABLE RUTH NEELY'S  
WY. R. CIV. P. 30(B)(6) NOTICE OF DEPOSITION  
OF WYOMING COMMISSION ON JUDICIAL CONDUCT AND ETHICS**

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

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



Dated August 12, 2015

s/

  
Kenneth J. Connelly\*

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

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

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

## SCHEDULE A

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

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

**CERTIFICATE OF SERVICE**

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

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



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Kenneth J. Connelly

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

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

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

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

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

**Procedural Background**

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

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

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

#### Argument

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

intended to prevent disclosure of information to the public. This fact is apparent from the Rule's command that "[n]o member of the Commission or its staff and no employee or agent of the Commission, disciplinary counsel and disciplinary counsel's staff, no attorney, and no testifying witness shall disclose such proceeding [or related] information . . . , except in the course of official duty or as otherwise authorized by these rules." *Id.* This does not mean that information in the Commission's possession is not *discoverable*, but only that it cannot be disclosed outside of this confidential proceeding

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

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

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

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

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


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

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

Conclusion

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

Dated: August 21, 2015



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Kenneth J. Connelly\*

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

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

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

**CERTIFICATE OF SERVICE**

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

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



---

Kenneth J. Connelly



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

An inquiry concerning  
The Honorable Ruth Neely  
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) *Wendy J. Soto*  
) Wendy J. Soto

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

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

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

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

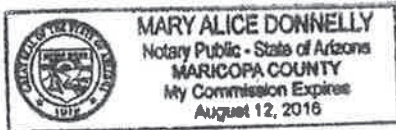
6. Attached hereto as Exhibit 5 is a true and correct copy of an e-mail from Disciplinary Counsel to Judge Neely's Counsel regarding recordings of Investigatory Panel Meetings in this matter, dated July 28, 2015, produced by the Commission during discovery.

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

FURTHER, AFFIANT SAYETH NAUGHT.

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

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



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

My commission expires: August 12, 2016