

**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
) Date: 8/31/15
) Wendy J. Soto

**THE HONORABLE RUTH NEELY'S SURREPLY IN OPPOSITION
TO THE COMMISSION'S MOTION FOR PROTECTIVE ORDER**

The Commission seeks the most drastic possible sanction against Judge Neely: removing her from her position as both a Circuit Court Magistrate and Municipal Town Judge. Yet at the same time, the Commission seeks to insulate itself from a routine deposition, arguing that "this is not a discovery case" solely because Judge Neely has admitted making statements about her religious beliefs regarding marriage. See Commission's Reply to the Honorable Ruth Neely's Response to the Commission's Motion for Protective Order ("Reply") at 7. But Judge Neely has a right under the Wyoming Rules of Civil Procedure and the Commission Rules to discover facts that are relevant to her defenses, including:

- whether the Commission has applied the Code of Judicial Conduct in a manner that discriminates based on viewpoint or content in violation of Judge Neely's constitutional rights;
- whether the Commission has applied the Code of Judicial Conduct in a manner that imposes a religious test in violation of Judge Neely's constitutional rights;

- whether the Commission has deprived Judge Neely of her constitutional right to the free exercise of religion by applying the Code of Judicial Conduct in a manner that is not neutral or generally applicable; and
- whether the Commission's initiation and continuing prosecution of this matter against Judge Neely violates her due process rights under the Wyoming and United State Constitutions.

When constitutional rights hang in the balance, facts regarding these issues are routinely discoverable, and the Commission's efforts to shield itself from deposition are unpersuasive. It therefore should be required to submit to the 30(b)(6) deposition as noticed by Judge Neely.

Argument

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

In its Reply, the Commission tries to support with legal authority its claim that it need not submit to a Rule 30(b)(6) deposition because it is not a "governmental agency" under the rule. *See* Reply at 1-3. But its purported authority is inapposite.

The Commission claims that "[u]nder Wyoming law, a governmental *agency* is defined as . . . 'any authority, bureau, board, commission, committee, or sub-agency of the state, a county, a municipality or other political subdivision which is created by or pursuant to the Wyoming Constitution, statute or ordinance, other than the state legislature or the judiciary.'" Reply at 2 (quoting Wyo. Stat. § 16-4-402).¹ But this definition of "governmental agency" does not apply in the Rule 30(b)(6) context because, by its own terms, that definition applies only to the Wyoming Public Meetings Act. *See* Wyo. Stat. § 16-4-402 ("As used in *this act* . . . 'Agency' means . . .") (emphasis added). The Commission's argument is thus baseless, given that courts

¹ In proffering this particular definition of "governmental agency," the Commission undermines arguments made in its Motion. As Judge Neely established in her Response to the Commission's Motion, there is no significance to the label "commission" or the fact that the Commission was created by the Wyoming Constitution. *See* Judge Neely's Response at 4. Indeed, the Commission's chosen definition of "agency" encompasses "commission[s]" and other governmental entities "created by or pursuant to the Wyoming Constitution [or] statute." Wyo. Stat. § 16-4-402.

may not “enlarge, stretch, expand, or extend a statute to matters that do not fall within its express provisions,” *Cheyenne Newspapers, Inc. v. Bldg. Code Bd. of Appeals of City of Cheyenne*, 2010 WY 2, ¶ 9, 222 P.3d 158, 162-63 (Wyo. 2010) (rejecting an attempt to import a statutory definition from another context, noting that the statutory references were “unhelpful, at best, and misleading, at worst”); *Worker’s Comp. Claim of Decker v. State ex rel. Wyoming Med. Comm’n*, 2008 WY 100, ¶ 16, 191 P.3d 105, 118 (Wyo. 2008) (“We presume that the legislature acts intentionally when it uses particular language in one statute, but not in another”).²

Moreover, the Commission’s attempt to analogize itself to the judiciary is unavailing. *See* Reply at 2. Throughout these proceedings, the Commission has functioned (and will function) in several capacities, which include prosecutorial, investigative, administrative, and adjudicative roles. It is only with respect to the Commission’s non-adjudicatory (i.e., non-judicial) tasks that Judge Neely seeks this 30(b)(6) deposition. Thus, the Commission’s fixation on its adjudicatory role is irrelevant.

Notably, the Commission’s position is particularly problematic because *it is the complaining party here*, the one that brought this proceeding against Judge Neely on its own motion and without formal complaint from any Wyoming citizen, and the one that seeks Judge Neely’s removal from the bench. And federal courts have routinely held that governmental agencies must submit to 30(b)(6) depositions, particularly when the agencies themselves initiate the action in question, as occurred here. *See, e.g., S.E.C. v. McCabe*, No. 2:13-CV-00161-TS-PMW, 2015 WL 2452937, at *3 (D. Utah May 22, 2015) (denying a protective order sought by the S.E.C. and stating that “Rule 30(b)(6) expressly applies to a government agency and provides

² The Commission argues that it “*should be* entitled to the same freedom from inquiry under Rule 30(b)(6)” that “[j]udicial and quasi-judicial bodies” are entitled to under the Wyoming Public Meetings Act and the Wyoming Public Records Act. *See* Reply at 2-3 (emphasis added). By arguing that it “*should be* entitled” to this protection, the Commission effectively admits that its proffered statutory definition does not apply here.

neither an exemption from Rule 30(b)(6), nor special consideration concerning the scope of discovery, especially when [the agency] voluntarily initiates an action”) (quotation marks omitted); *E.E.O.C. v. Pointe at Kirby Gate, LLC*, 290 F.R.D. 89, 91 (W.D. Tenn. 2003) (ordering the plaintiff E.E.O.C. to “designate one or more persons to answer questions on behalf of the [agency] on the topics identified in the defendants’ notice of deposition,” and rejecting the argument that “the attorney-client, work product, or deliberative process privileges” were sufficient to quash a 30(b)(6) deposition).³ Even members of the judiciary must submit to 30(b)(6) depositions when they are parties to an action and the noticed depositions do not seek the “motivations or thought processes” behind a judicial ruling. *Prakel v. Indiana*, No. 4:12-CV-45-SEB-WGH, 2013 WL 3287691, at *7 (S.D. Ind. June 28, 2013). Therefore, the Commission’s attempt to avoid Rule 30(b)(6) by labeling itself a judicial or quasi-judicial body must fail.

The cases that the Commission cites do not alter this conclusion. For example, *Adkins v. Kansas Commission on Judicial Qualifications*, No. 11-4109-SAC, 2011 WL 5024346 (D. Kan. Oct. 20, 2011), and *McKeown v. N.Y. State Commission on Judicial Conduct*, 377 F. App’x 121 (2d Cir. 2010), conclude that that judicial commissions are entitled to judicial immunity. But Judge Neely is not pursuing a civil action against the Commission or its members; thus *Adkins* and *McKeown* are irrelevant. Nor does *First Amendment Coalition v. Judicial Inquiry & Review Board*, 784 F.2d 467 (3d Cir. 1986), support the Commission’s Motion. That case involved an attempt by members of the public—specifically, the media—to access confidential documents possessed by a judicial commission. That is very different from what is at issue here—namely, an attempt by a party (a judge) facing disciplinary charges to obtain information that she needs from the prosecuting agency in order to evaluate and establish her affirmative defenses. *First*

³ See also *S.E.C. v. Collins & Aikman Corp.*, 256 F.R.D. 403, 418 (S.D.N.Y. 2009) (holding that “when a government agency initiates litigation, it must be prepared to follow the same discovery rules that govern private parties (albeit with the benefit of additional privileges such as deliberative process and state secrets)”).

Amendment Coalition thus does not speak to the issues presented here. Finally, the litigant in *Worker's Compensation Claim of Decker v. State ex rel. Wyoming Med. Commission*, 2008 WY 100, ¶ 8, 191 P.3d 105, 113 (Wyo. 2008), argued that an administrative agency violated due-process principles because it did not open its adjudicatory deliberations to the public. But Judge Neely does not challenge the Commission's ability to conduct its adjudicatory deliberations in private. Rather, she seeks standard discovery concerning the Commission's prosecutorial, investigatory, and administrative tasks. Accordingly, none of the cases that the Commission cites advance its arguments.

In sum, "[c]ourts will not prohibit depositions except in extraordinary circumstances," *Pointe at Kirby Gate*, 290 F.R.D. at 90, and an order doing so "would likely be in error." *Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir. 1979). Such error would be especially unjust here because the Commission has on its own motion brought these proceedings against Judge Neely.

II. The Confidentiality Provisions of Commission Rule 22 Do Not Shield Discovery.

The Commission, citing Commission Rule 22, objects on confidentiality grounds to the fourth, sixth, and ninth topics designated for examination in Judge Neely's Rule 30(b)(6) deposition notice. *See* Reply at 3-4. The Commission's basis for resisting discovery under Commission Rule 22 is fatally flawed, however, because it conflates the question of whether information must be kept *confidential* with the question of whether the information is *discoverable*. "The 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). Because the Commission has failed to demonstrate a basis for resisting the discovery of information that may be confidential under Commission Rule 22, the Commission's Motion should be denied.

The Commission asserts that, pursuant to Commission Rule 22, Judge Neely may waive confidentiality as to the subject matter of these proceedings, but contends that a “broader right of confidentiality . . . belongs to the [Commission].” Reply at 4.⁴ The Commission’s proceedings must “remain confidential,” the Commission contends, in order for it to “function properly.” *Id.* But through this 30(b)(6) deposition, Judge Neely is not seeking to lift the veil of *confidentiality*. Rather, she seeks *discovery* of information relevant to her defenses. Any information Judge Neely obtains by deposing the Commission will be used in these proceedings as necessary for Judge Neely’s defense, and thus confidentiality will not be broken by permitting Judge Neely to conduct the noticed 30(b)(6) deposition. In short, there is simply no need to curtail discovery in order to safeguard confidentiality. But there is a compelling need for Judge Neely to discover facts essential to her defense.

In addition, as has been discussed above, the Commission’s argument that failing to issue a protective order would be akin to violating the confidentiality of “a judge or jury’s deliberations” makes no sense. Reply at 4. The topics designated for examination in Judge Neely’s Rule 30(b)(6) deposition notice do not seek any information related to the Adjudicatory Panel’s deliberations. Rather, the topics designated for examination seek information about the procedures and criteria related to the commencement of these proceedings and the (non-judicial) administration of the Commission’s business, including the convening of the Investigatory Panel, the selection of panel members, and the factors that impact the decision to initiate formal proceedings. The topics were designated for examination because information about the manner in which the Commission applies and enforces the Code of Judicial Conduct is relevant to Judge Neely’s as-applied constitutional defenses. *See supra* at 1-2.

⁴ While it is not necessary to reach the issue here, the Commission’s broad view of confidentiality is highly questionable.

In short, confidentiality will remain intact pursuant to Commission Rule 22 regardless of whether Judge Neely is permitted to conduct the noticed 30(b)(6) deposition. In contrast, issuing the requested protective order would greatly prejudice Judge Neely's ability to obtain relevant information necessary to mount a complete defense. Accordingly, the Commission's motion should be denied.⁵

III. The Commission Waived Its Purported Right to Shield Discovery of Information Pertaining to the Already-Disclosed Meetings of the Investigatory Panel.

Additionally, the Commission has waived any purported privilege that it might have had to the discovery of information concerning the already-disclosed meetings of the Investigatory Panel. *See* Affidavit of Kenneth J. Connelly in Support of Surreply ("Connelly Aff.") at Exhibit I (Commission Response to Request for Production of Documents No. 11) (noting the production of "non-privileged audio recordings of I-Panel meetings"). In reply, the Commission asserts that no waiver could have occurred because the confidentiality provisions of Commission Rule 22 are "not waivable." Reply at 4. Yet as explained above, the confidentiality that Commission Rule 22 requires is not relevant to resolving this Motion. Judge Neely does not argue here that the Commission waived confidentiality and thus that information disclosed during these proceedings can be conveyed outside of these proceedings. Instead, she argues that the Commission waived any ability it may have had to bar discovery concerning certain Investigatory Panel meetings when it produced audio recordings of those meetings.

The Commission, moreover, unhelpfully cites cases indicating that jurisdictional defenses based on statutes of limitations or a lack of subject-matter jurisdiction may not be waived. But

⁵ Moreover, the requested protective order is not necessary to safeguard privileged information. Objections based on privilege or related to the scope of discovery are properly made by the Commission's counsel during the course of the deposition. *See McCabe*, 2015 WL 2452937, at *4 ("To the extent Defendant's examination strays into truly privileged or irrelevant areas, the court is confident that . . . counsel is familiar with the appropriate procedure for objecting at a deposition.").

unlike those jurisdictional defenses, evidentiary privileges like what the Commission seeks to assert here are waivable. See *United States v. Ryans*, 903 F.2d 731, 741 n.13 (10th Cir. 1990) (stating that “the confidentiality of communications covered by the [attorney-client] privilege must be jealously guarded by the holder of the privilege lest it be waived”).

The Commission also contends that no waiver in fact occurred here. Citing *Jensen v. Fremont Motors Cody, Inc.*, 58 P.3d 322, 328 (Wyo. 2002), the Commission argues that its production of the audio recordings does not constitute “an express, voluntary, and intentional relinquishment of a known right.” Reply at 5. But *Jensen* does not pertain here, for at least two reasons. First, the employer in *Jensen* raised waiver as a substantive defense against a claim for underpayment of wages. 58 P.3d at 327. The case did not involve a waiver of an evidentiary privilege during discovery. Second, the basis for the employer’s waiver argument in *Jensen* was its former employee’s failure to act: the employee had accepted incorrect paychecks for many months without complaint and only later asserted a claim for underpayment of wages. *Id.* The Court held that a claim may not be waived based solely on the silence or inaction of the employee. *Id.* at 327-28. Here, by contrast, the Commission waived its alleged evidentiary privilege through its voluntary and intentional disclosure of information about Investigatory Panel meetings: specifically, the Commission knowingly produced audio recordings of two Investigatory Panel meetings, expressly stating that the recordings are “non-privileged.” See Connelly Aff. at Exhibit 1 (Commission Response to Request for Production of Documents No. 11) (noting the production of “non-privileged audio recordings of I-Panel meetings”). Having voluntarily produced recordings of Investigatory Panel meetings, the Commission should not now be able to prevent Judge Neely from examining the Commission about the contents of those very recordings. See *First Wyoming Bank, N.A., Jackson Hole v. Contl. Ins. Co.*, 860 P.2d 1064,

1088 (Wyo. 1993) (holding that “[p]rivilege is waived when the party claiming the privilege releases the document”), *opinion vacated in part on other grounds on reh'g*, 860 P.2d 1094 (Wyo. 1993) (citing *People v. Calandra*, 120 Misc. 2d 1059, 467 N.Y.S.2d 141 (N.Y. Sup. Ct. 1983); *Freeman v. Bianchi*, 820 S.W.2d 853 (Tex. Ct. App. 1991)).

Conclusion

For the foregoing reasons, the Presiding Officer of the Adjudicatory Panel should deny the Commission’s Motion for Protective Order.

Dated: August 31, 2015



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**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)	
Ninth Judicial District)	
Pinedale, Sublette County)	
)	

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

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

1. I am one of the attorneys representing Respondent, the Honorable Ruth Neely ("Judge Neely"), in the above-captioned matter. I submit this affidavit in support of Judge Neely's Surreply 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 Response to Judge Neely's Document Requests, dated July 27, 2015, produced by the Commission during discovery.

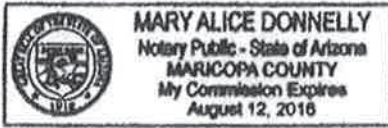
I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

FURTHER, AFFIANT SAYETH NAUGHT.



Kenneth J. Connelly

SUBSCRIBED AND SWORN TO before me this 31 day of August, 2015, by Kenneth J. Connelly.





Notary Public

My commission expires: Aug 12, 2016

EXHIBIT

1

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS

STATE OF WYOMING

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

CJCE'S RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS

COMES NOW the Commission on Judicial Conduct and Ethics, by and through its attorney Patrick Dixon, and responds to Judge Neely's Request for Production of Documents as follows. This response is in accordance with the Wyoming Rules of Civil Procedure and the standards of practice in Wyoming, and not necessarily any instruction or definition propounded by counsel.

GENERAL OBJECTION: The Commission objects to the Judge's Request for Production of Documents *in toto* on the grounds that Rule 22(a) of the Rules Governing the Commission on Judicial Conduct and Ethics provides, in material part:

(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.

Subject to this objection, the Commission responds as follows:

REQUEST FOR PRODUCTION NO. 1: All documents that concern the facts or circumstances of the incident giving rise to this matter or that relate to any of the

allegations in the Notice or the responses or affirmative defenses in Judge Neely's Answer.

RESPONSE: This request is objected to as vague and over broad. Without waiving the objection, attached hereto are the following documents:

- a. December 11, 2014 printout captioned "Top Stories"
- b. Sublette Examiner Article modified Thursday, December 11, 2014
- c. January 12, 2015 inquiry to Judges Neely and Haws
- d. January 17, 2015 response from Judge Haws
- e. February 7, 2015 response from Judge Neely
- f. December 22, 2014 email from Ana Cuprill to Wendy Soto

REQUEST FOR PRODUCTION NO. 2: All documents that tend to support or refute the claims and assertions made in the Notice or the Answer.

RESPONSE: See preceding response and attached documents.

REQUEST FOR PRODUCTION NO. 3: All documents relied upon, referred to, identified in, or reviewed while compiling the response to Judge Neely's First Set of Interrogatories to the Wyoming Commission on Judicial Conduct and Ethics.

RESPONSE: See preceding response and attached documents.

REQUEST FOR PRODUCTION NO. 4: All documents referring or relating to Judge Neely that concern the subject matter of this proceeding.

RESPONSE: In addition to the documents referenced in Response No. 1, see attached I-Panel file.

REQUEST FOR PRODUCTION NO. 5: All documents referring or relating to Ned Donovan, Judge John Crow, Judge Curt A. Haws, or John Burman that concern the subject matter of this proceeding.

RESPONSE:

Ned Donovan: *See* attached interview notes.

Judge John Crow: There are no documents responsive to this request.

Judge Curt A. Haws: *See* response to 1(c) and (d).

John Burman: *See* attached letters dated January 29, 2015 and March 23, 2015.

REQUEST FOR PRODUCTION NO. 6: All documents provided to Wyoming state judges, judicial officials, or magistrates regarding any adjustments to their respective marriage-related duties in the wake of the decision in *Guzzo v. Mead*, 2014 WL 5317797 (D.Wyo.2014), including all such documents issued by the Wyoming Commission of Judicial Conduct and Ethics, the Judicial Ethics Advisory Committee, or any other official Wyoming government body.

RESPONSE: *See* attached newsletter published by the Center on Judicial Ethics. This newsletter is available to all Wyoming judges, Judge Neely included, on a bi-weekly basis and provides general information on the judiciary's duties. The Commission has made no attempt to retrieve and produce all of these newsletters as historical newsletters are equally available to the Judge and the Commission is willing to assist if necessary. Except for this type of publication, no other document responds to this request.

REQUEST FOR PRODUCTION NO. 7: All documents referring or relating to any conversation between Judge Neely and Ned Donovan.

RESPONSE: Except for those documents identified in response to Request 1(a) and (b), the Commission is unaware of any other document responsive to this request.

REQUEST FOR PRODUCTION NO. 8: All documents written by or on behalf of Judge Neely, Ned Donovan, Judge John Crow, and Judge Curt A. Haws that concerning the subject matter of this proceeding.

RESPONSE: See preceding responses.

REQUEST FOR PRODUCTION NO. 9: All documents reflecting, referencing, or relating to any communication between any person (including Judge Neely and any of the Commission's representatives, employees, or agents) and Ned Donovan.

RESPONSE: Except for the newspaper articles identified in Request 1(a) and (b), there are no documents responsive to this request.

REQUEST FOR PRODUCTION NO. 10: All documents reflecting, referencing, or relating to any communication between any person (including Judge Neely and any of the Commission's representatives, employees, or agents) and Judge Curt A. Haws.

RESPONSE: This request is objected to as calling for the disclosure of attorney-work product. Without waiving the objection, see response to Request 1(c) and (d).

REQUEST FOR PRODUCTION NO. 11: All documents that concern or relate to any investigation of Judge Neely conducted by the Commission, including but not limited to any investigation that concerns the subject matter of this proceeding. Include all documents (including audio or video recordings) acquired, collected, or created by the Commission in the course of its investigation in this proceeding, including but not

limited to all audio or video recordings (or transcripts) of any interview or discussion with any individual who the Commission talked to in the course of its investigation in this proceeding.

RESPONSE: This request is objected to as calling for the disclosure of privileged communications and attorney work product. Without waiving the objection, see attached I-Panel file and non-privileged audio recordings of I-Panel meetings. The audio recordings will be forwarded by separate email.

REQUEST FOR PRODUCTION NO. 12: All documents that concern or relate to the appointment, retention, or reappointment of Judge Neely as both a court magistrate or a municipal court judge.

RESPONSE: The Commission has made reasonable inquiry of Judge Haws concerning documents that relate to the appointment, retention or reappointment of Judge Neely. At the time of this response, no such documents have been located.

REQUEST FOR PRODUCTION NO. 13: All documents that concern, mention, discuss, refer to, relate to, support or attempt to refute Judge Neely's affirmative defenses.

RESPONSE: This request is objected to as being vague and ambiguous and calling for the disclosure of attorney work product. Without waiving the objection, any document produced in response to preceding or succeeding requests would be responsive to this request.

REQUEST FOR PRODUCTION NO. 14: All documents concerning any investigation or formal proceeding that the Commission has pursued against any judge wherein the

judge alleged that he or she was protected by a federal or state constitutional speech- or religion-related defense; for each relevant instance, produce (at a minimum) the initiating documents such as a complaint or notice of commencement of formal proceedings; the documents in the investigative file; the findings of fact, conclusions of law, and any dissenting opinions issued by the Commission as part of its final adjudication; the Commission's ultimate recommendation to the Wyoming Supreme Court; and the Wyoming Supreme Court's final disposition of the matter.

RESPONSE: This request is objected to on the following grounds: (a) This request is objected to as violating the confidentiality provisions of Rule 22(a) as set forth above. Even if there were documents responsive to this request, the Commission would not produce any non-public document regarding any other Judge without an order from the Wyoming Supreme Court. (b) This request is over broad and unduly burdensome. As stated before, the Commission has thousands of files concerning complaints regarding other judges. It would be unduly burdensome to require the Commission to research each file to determine whether it might be responsive to this request. (c) To the extent this request asks for documents which are public records, those records are equally available to the Judge.

Without waiving these objections, and subject to the disclaimer set forth in subparagraph b above, the Commission is unaware of any document which would be responsive to this request.

REQUEST FOR PRODUCTION NO. 15: All documents that concern or relate to discipline of Wyoming judges by the Commission or the Wyoming Supreme Court upon the Commission's recommendation since 1995, including but not limited to

documents detailing or otherwise mentioning the allegations and the resulting discipline handed down by the Commission or the Wyoming Supreme Court.

RESPONSE: This request is objected to on the grounds of confidentiality pursuant to Rule 22(a). The Commission will not produce any non-public document relating to any other judge without an order of the Wyoming Supreme Court. This request is further objected to as being over broad as to time and unduly burdensome. Although, on reasonable inquiry, no public reprimands have been issued within the requested time period, it is conceivable that this may have occurred. Once again, it would be unduly burdensome to require the Commission to search its archives to accurately respond to the request in this regard.

Without waiving these objections, attached hereto are public records relating to the disciplines of Judges Schroeder, Crow and Lopez. Judge Neely is directed to those Supreme Court files for other documents which may have been filed of record.

REQUEST FOR PRODUCTION NO. 16: All documents that concern or relate to any complaints alleging sexual-orientation discrimination that have been filed with the Commission, including but not limited to documents detailing or otherwise mentioning the allegations, the investigation, and the final disposition by the Commission or the Wyoming Supreme Court.


RESPONSE: See response and objections to Request No. 14 above.

REQUEST FOR PRODUCTION NO. 17: All documents that the Commission plans to file as an exhibit with any dispositive motion that it might submit in this proceeding, that it plans to mark for identification or attempt to introduce into evidence at the

hearing in this proceeding, or that it anticipates using at the deposition of any witness in this proceeding.

RESPONSE: The Commission will offer any document produced in response to any preceding request, except Request No. 15 as an exhibit at the hearing of the matter. The Commission will designate additional exhibits in accordance with the Hearing Officer's Scheduling Order.

DATED this 27 day of July, 2015.

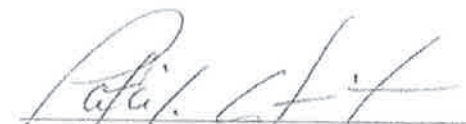

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Disciplinary Counsel

CERTIFICATE OF SERVICE

I, Patrick Dixon, do hereby certify that on the 27 day of July, 2015, I served the above and foregoing ***CJCE's Response to Request for Production of Documents*** 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. 90th Street
Scottsdale, Arizona 85260


Patrick Dixon

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of August, 2015, I served the foregoing Surreply and Affidavit of Kenneth J. Connelly by electronic mail and by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

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Kenneth J. Connelly