

**UNITED STATES OF AMERICA  
EQUAL OPPORTUNITY EMPLOYMENT COMMISSION  
OFFICE OF THE ADMINISTRATIVE LAW JUDGE**

**Sandra G. Myrick**

**Complainant,**

**v.**

**Marion Warren, Director  
North Carolina Administrative  
Office of Courts  
(in his official capacity)**

**Honorable N. Hunt Gwyn,  
Chief District Court Judge  
(in his official capacity), and**

**Honorable Christopher W. Bragg,  
Senior Resident Superior Court  
Judge (in his official capacity)**

**Respondents.**

**Docket No. 16-EEOC-0001**

**EEOC Charge No. 430-2015-01202**

**HON. MICHAEL J. DEVINE  
Administrative Law Judge**

**INITIAL DECISION AND ORDER**

**Appearances:**

**On behalf of the Respondents**

**Grady L. Balentine, Jr., Esq.  
Kathryn Shields, Esq.  
Catherine R. Laney, Esq.  
North Carolina Dept. of Justice**

**On behalf of the Complainant**

**W. Ellis Boyle, Esq.  
Joe Thomas Knott, III, Esq.  
Stephanie H. Barclay, Esq.**

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## I. BACKGROUND<sup>1</sup>

### A. Events of October 2014

Magistrates in North Carolina perform marriages as part of their duties. In October of 2014, the law regarding same-sex marriage was unsettled throughout many jurisdictions in the United States and constituted a subject of great debate and high public interest. On October 10, 2014, the court in Gen. Synod of the United Church of Christ v. Resinger, 12 F. Supp. 3d 790 (W.D.N.C. 2014) ruled that in the light of the recent decision in Bostic v. Schaefer, 760 F.3d 352 (4th Cir. 2014) the provisions of the North Carolina State Constitution and state law that operate to deny same-sex couples the right to marry were unconstitutional. Likewise, on October 14, 2014, the court in Fisher-Borne v. Smith, 14 F.Supp.3d 695 (M.D.N.C. 2014) independently reviewed the relevant statutes and state constitutional amendments and also held that the Fourth Circuit ruling in Bostic applied and found the North Carolina Constitution and state statutes that prevented same-sex marriage were unconstitutional. 20/20 hindsight might make this matter seem easy to address, but in 2014 the law regarding this issue, was both unsettled and contentious.<sup>2</sup> Legal challenges to laws and state constitutions that prevented recognition of same-sex marriages were asserted in federal courts' various jurisdictions in the United States, including North Carolina. The federal court rulings in Gen. Synod and

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<sup>1</sup> At the time this proceeding was assigned to the undersigned Administrative Law Judge, Sandra Gail Myrick's Complaint designated Judge John W. Smith, II, as the Director of the Administrative Office of the Courts of North Carolina and designated Judge W. David Lee as the Senior Resident Superior Court Judge. During the proceedings, the parties moved to substitute the names of Judge John W. Smith with Judge Marion Warren and Judge David Lee with Judge Christopher W. Bragg. Tr. 1, p.5: see Kathryn H. Shields, Esq. Entry of Appearance dated February 17, 2016.

<sup>2</sup> The district court rulings followed the Fourth Circuit ruling in Bostic v. Schaefer, 760 F.3d 353 (4th Cir. 2014) (holding that state constitution and statutes in Virginia preventing same-sex marriages were unconstitutional. The Supreme Court's landmark decision on the issue of same-sex marriage was not issued until June 26, 2015, well after the occurrence of the events in this matter. Obergefell v. Hodges, 135 S.Ct. 2584 (2015). See also testimony of Judge Smith, Tr. II generally.

Fisher-Borne, *supra*, holding bars to same-sex marriage were unconstitutional required North Carolina to immediately implement those rulings.<sup>3</sup> The Supreme Court had not yet ruled on this issue and public officials and religious groups remained opposed to same-sex marriage, however, implementation of the rulings in Gen. Synod and Fisher-Borne by North Carolina remained subject to review and enforcement by the federal district courts.

Although North Carolina had sought a stay of the ruling to have time to implement the court's decision no stay was issued. Within North Carolina many opposed the results of the federal rulings which were subject to further appeal. This clearly placed Judge John Smith, Director of the North Carolina Administrative Office of the Courts (NCAOC) in the position of Odysseus navigating between Scylla and Charybdis, or in modern terms, between a rock and a hard place.<sup>4</sup> However, in the absence of a stay, if North Carolina judicial officials failed to comply with federal court orders they could be subject to contempt and sanctions and removal.<sup>5</sup>

Despite the existence of opposition by religious objections to same-sex marriage and the federal district court rulings, Judge Smith decided that immediate implementation

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<sup>3</sup> The federal district court ruled that the United States Constitution required North Carolina to honor same-sex marriages in the same manner as opposite-sex marriages. Judge John Smith was the Director of the North Carolina Administrative Office of the Courts (NCAOC) in October of 2014 when the federal court rulings were issued. Judge Smith testified he had expected a stay of the Order regarding same-sex marriages to be provided; however, the federal court did not grant a stay.

<sup>4</sup> Odysseus chose the somewhat safer course to pass closer to Scylla and lost some of his crew rather than risk loss of the entire ship. By choosing immediate implementation Judge Smith apparently lost some of his crew as shown by Complainant's Ex. 19 (list of some magistrates leaving service in October and November 2014 indicating departure due to same-sex marriage issue), but maintained the continuing operations of the North Carolina judiciary.

<sup>5</sup> Enforcement of the federal court orders may not be ignored by state officials. *E.g.* Alabama Chief Justice Roy Moore was removed from office in 2003 for refusing to comply with a federal court order to remove a Ten Commandments display from the Alabama Judiciary Building. Glassroth v. Moore, 335 F.3d 1282, 1303 (11th Cir. 2003). He was subsequently re-elected to that office and has again been suspended for failing to comply with the Supreme Court's ruling in Obergefell. In the Matter of: Roy S. Moore Chief Justice, Supreme Court of Alabama, 2016 WL 7106073, at \*19.

was required and it was necessary to provide guidance to the judiciary throughout North Carolina on the effect of the federal court ruling. Based on his past experience and analysis of the law, Judge Smith determined that the State of North Carolina would not be able to provide legal representation or defend judges or magistrates within North Carolina if they refused to comply with the federal district court orders mandating that same-sex couples were entitled to be married and same-sex marriages were to be honored the same as opposite sex marriages. See Gen. Synod supra; Complainant (Compl.) Exhibit (Ex.) 20. On October 13, 2014, Judge Smith, in his capacity as Director of the NCAOC, issued an interim guidance memorandum. Compl. Ex. 5. The next day, October 14, 2014, Pamela Best, General Counsel for North Carolina Administrative Office of the Courts, subsequently issued a more detailed memorandum regarding the effect of the federal rulings. Compl. Ex. 1. These memoranda were sent to all judges and magistrates in the State of North Carolina.

Magistrates in North Carolina are not required to be attorneys, but are part of the judiciary organization and work subject to supervision of the Chief District Judge. In October 2014, Sandra Gayle Myrick (Complainant) performed duties as a magistrate in Union County, North Carolina. In October 2014, Chief District Court Judge Gwyn supervised Magistrate Myrick and six other magistrates in that county.

The federal court ruling overturning the North Carolina law and providing for same-sex marriages in North Carolina occurred while Complainant was not on duty. When Complainant returned to her office on October 17, 2014, she requested a meeting with her supervisor Chief Judge Gwyn. During that meeting Magistrate Myrick informed Judge Gwyn that due to her religious beliefs she could not be a participant in same-sex

marriages. She also provided a letter of resignation to Judge Gwyn during that meeting because of her religious conflict with the requirement for same-sex marriages.

On the following Monday, October 20, 2014, Magistrate Myrick had another meeting on this matter with Chief Judge Gwyn and Senior Magistrate Sherry Crowder and Magistrate Gayle Smith. During that meeting, Magistrate Myrick asked for a “concession” regarding her religious beliefs, but Chief Judge Gwyn considered the NCAOC memo to be dispositive and leave no room for anything other than complying with the new ruling so no accommodation was offered. Judge Gwyn provided Magistrate Myrick a letter accepting her resignation on October 20, 2014.

## **B. Procedural Background**

On April 14, 2015, Complainant filed a Complaint with the Equal Employment Opportunity Commission (EEOC) asserting a charge of religious discrimination against Respondents under Title VII of the Civil Rights Act of 1964 (the 1964 Act) as amended for failing to provide an accommodation of her religious beliefs.<sup>6</sup> The alleged discrimination took place in October of 2014 while Complainant was employed as a North Carolina magistrate. Pursuant to an interagency agreement, the undersigned judge was assigned to this matter on January 20, 2016.

After denying Respondents’ Initial Motion to Dismiss, the court set a schedule for discovery, motions and a hearing.<sup>7</sup> A hearing was conducted on September 7 and 8, 2016, in Charlotte, North Carolina. At the conclusion of the hearing, the parties agreed to a schedule for submitting post-hearing briefs and arguments and proposed findings of fact and conclusions of law. The transcript was served and both parties submitted final briefs

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<sup>6</sup> Complainant’s case is controlled by the Government Employees Right Act of 1991, an amendment to the 1964 Act.

<sup>7</sup> Both parties filed motions for summary decision. These motions were denied because there remained material facts in dispute which required a hearing.

and argument on October 31, 2016.<sup>8</sup> The majority of the facts of this case are undisputed. However, the parties view of the legal consequences of those facts differ greatly, and the situational decisions presented to the parties were difficult and time sensitive. The record is closed and this matter is ripe for decision.

## **II. ISSUES**

- (1) Does Title VII of the Civil Rights Act of 1964, as amended by the Government Employees Rights Act of 1991, provide jurisdiction to address Magistrate Myrick's complaint of religious discrimination.
- (2) Did Respondents in their official capacity discriminate against Magistrate Myrick by failing to provide an accommodation of Complainant's religious beliefs?
- (3) Was Complainant's resignation involuntary because of the threat of criminal prosecution or civil suit or discipline if she failed to conduct same-sex marriages contrary to her religious beliefs?

## **III. FINDINGS OF FACT**

All of the testimony, exhibits and evidence in the record, establish the following facts<sup>9</sup> by a preponderance of the evidence:

1. Sandra Gayle Myrick (Complainant) became a magistrate in Union County, North Carolina in 2011. She was appointed to a two-year term in 2012, and served as a magistrate until October 20, 2014. (Court Ex. I).
2. On October 6, 2014, the United States Fourth Circuit Court of Appeals issued a mandate in Bostic v. Schaefer, which ruled that all same-sex couples in Virginia could be married in the same manner as opposite sex couples. (Court Ex. I).

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<sup>8</sup> At the close of the hearing, the court found good cause pursuant to 29 C.F.R. § 1603.217 to extend the time for issuing a decision due to the complex nature of the issues and facts presented by the parties in this action. Counsel for the parties agreed. Tr. II at 68-69.

<sup>9</sup> Through Court Exhibit I the parties stipulated to a substantial number of facts in this matter including Magistrate Myrick's bona fide religious belief and the existence and contents of the memoranda issued on October 13 and 14, 2014, regarding implementation of the federal rulings in North Carolina and the potential consequences for failure to comply. Several critical facts remained in dispute regarding Complainant's status as an employee and whether she effectively requested an accommodation of her religious beliefs. The parties have dramatically different views of how the law should be applied to the facts.

3. On October 10, 2014, the United States District Court for the Western District of North Carolina issued an Order declaring N.C. Gen. Stat. Chapter 51 and Article XIV, Section 6 of the North Carolina Constitution unconstitutional to the extent they precluded recognition of same-sex marriage in North Carolina. (Court Ex. I).
4. Judge John W. Smith (Respondent in his official capacity<sup>10</sup>) was the Director of the Administrative Office of the Courts in North Carolina in 2014. (Court Ex. I).
5. Following the federal court rulings, Judge Smith, acting in his capacity as the Director of the Administrative Office of the Courts, sent an interim guidance memorandum out to the field of the Administrative of the Courts regarding same-sex marriage rulings on October 13, 2014. (Court Ex. I).
6. Pamela Best was the General Counsel for the Administrative Office of the Courts of North Carolina in October 2014. (Court Ex. I).
7. On October 14, 2014, Pamela Best issued a memorandum to Superior Court Judges, Chief District Court Judges, District Court Judges, Clerks of Superior Court and Magistrates regarding the requirement to conduct same-sex marriages or potentially be subject to criminal or civil liability. (Compl. Ex. 1).
8. Magistrate Myrick has a sincerely held religious belief that precludes her from participating in a same-sex marriage ceremony. (Court Ex. I).
9. Judge Gwyn was the District Court Judge for Union County, North Carolina in October 2014 and was Magistrate Myrick's supervisor. (Tr. I at 19-20).
10. Magistrate Myrick was not on duty when the memoranda regarding same-sex marriages was issued. She returned to the office on October 17, 2014. (Tr. I at 110-112).
11. On October 17, 2014, Magistrate Myrick met with Judge Gwyn, informed him that she could not perform same-sex marriages and submitted a letter of resignation to him during that meeting. (Court Ex. I; Tr. I at 25; Tr. I at 182-98).
12. Senior Supervising Magistrate Sherry Crowder had delegated authority from Judge Gwyn for scheduling magistrates in Union County, North Carolina in 2014. (Tr. I at 17).
13. Judge Gwyn, Magistrate Gayle Smith, Magistrate Sherry Crowder and Magistrate Gayle Myrick had a meeting in Judge Gwyn's office on October 20, 2014. (Tr. I at 22).

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<sup>10</sup> See footnote 1, supra.



14. During the October 20, 2014 meeting, Magistrate Myrick asked for a concession or other action by Judge Gwyn to help her with regard to her religious conflict during that meeting so she could continue with her position until the end of the term. (Tr. I at 89-92, 112-114, 194-201; Respondents' (Resp.) Ex. A).

15. Judge Gwyn stated he did not see any flexibility in view of the memorandum issued on October 14, 2014. (Tr. I at 23-24).

16. Judge Gwyn provided a letter accepting Magistrate Gayle Myrick's resignation to her at the end of the meeting on October 20, 2014. (Court Ex. I; Resp. Ex. B).

17. Judge Gwyn did not offer any accommodation to Magistrate Myrick that would have allowed her to continue as a magistrate while not having to perform a same-sex marriage ceremony contrary to her religious beliefs. (Tr. I at 23-24, 43-45).

18. Magistrate Crowder managed the work assignments of Union county magistrates and could have managed the schedule to accommodate Magistrate Myrick's religious objections to same-sex marriage so that she would not have to perform same-sex marriages for at least two months. (Tr. I at 87-92 ).

19. The State of North Carolina subsequently enacted Senate Bill 2 in June 2015 which provides an opportunity for accommodation of religious beliefs of magistrates. (Court Ex. I).

#### **IV. PRINCIPLES OF LAW**

##### **A. EEOC Jurisdiction**

The Government Employees Rights Act of 1991 (GERA) amending Title VII of the Civil Rights Act of 1964 provides a basis for jurisdiction in this action.<sup>11</sup> 42 U.S.C. § 2000e-16c. Under GERA, employees previously exempted from coverage under the Civil Rights Act of 1964 were provided an opportunity to assert claims of discrimination in an administrative action. Specifically, GERA extended protection against discrimination to "any individual chosen or appointed, by a person elected to public office in any State . . . (a) to be a member of the elected official's personal staff; (b) to

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<sup>11</sup> Title VII of the Civil Rights Act of 1964 protects employees against discrimination from employers based on race, color, religion, sex, and national origin. 42 U.S.C. § 2000e et. seq.

serve the elected office on the policy-making level; or (c) to serve the elected official as an immediate advisor with respect to the exercise of the constitutional or legal powers of the office.” 29 C.F.R. § 1603.101(b); 42 U.S.C. § 2000e-16c. Discrimination claims filed under GERA are filed with the EEOC and adverse administrative actions are appealed to the United States Court of Appeals. 42 U.S.C. § 2000e-16c; Crain v. Butler, 419 F.Supp.2d 785 (E.D.N.C. 2005).

#### **B. Religious Discrimination**

Under Title VII of the Civil Rights Act of 1964, employers may be liable for failure to accommodate the religious practices of their employees absent proof that such accommodation imposes an undue hardship on the employer. 42 U.S.C. 2000e(j); 29 C.F.R. § 1605.2. To establish a prima facie case of religious discrimination based on the failure to accommodate, Complainant must demonstrate that she: (1) has a bona fide religious belief that conflicts with an employment requirement; (2) informed her employer of the religious belief; and (3) was disciplined for failure to comply with the employment requirement or otherwise adversely affected. See Reilly v. United States Postal Service, EEOC Appeal No. 01941810 (November 17, 1994); Turpen v. Missouri-Kansas-Texas R. Co., 736 F.2d 1022 (5th Cir. 1984); 29 C.F.R. Part 1605.

#### **C. Burden of Proof**

The complainant bears the initial burden in religious discrimination cases based on an employer’s refusal to accommodate to show that complainant: (1) has a bona fide religious belief; (2) informed the employer of belief and requested accommodations; and (3) was adversely affected by employer’s refusal to accommodate.<sup>12</sup> See Reilly v. United States Postal Service, EEOC Appeal No. 01941810 (November 17, 1994); 29 C.F.R. Part

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<sup>12</sup> An employee is adversely affected by an employer when the employee is disciplined, terminated, or constructively discharged. McCabe v. Sharrett, 12 F.3d 1558, 1563 (11th Cir.1994).

1605. This burden is proved by a preponderance of the evidence. Baltimore B. Bishop, Petitioner, EEOC DOC 03970085, 1997 WL 618771, at \*3 (Sept. 16, 1997). The preponderance of the evidence standard “requires the trier of fact ‘to believe that the existence of a fact is more probable than its nonexistence before [he] may find in favor of the party who has the burden to persuade the [judge] of the fact’s existence.’” Concrete Pipe & Prod. of California, Inc. v. Constr. Laborers Pension Trust for S. California, 508 U.S. 602, 622 (1993) (citing In re Winship, 397 U.S. 358, 371-72 (1970). (Harlan, J., concurring) (brackets in original)).

In cases where the complainant asserts constructive discharge, the complainant bears the burden to also demonstrate by a preponderance of the evidence that the resignation was not voluntary. Shoaf v. Dep’t of Agr., 260 F.3d 1336 (Fed. Cir. 2001). To prove constructive discharge the complainant must show as an employee the working conditions are so intolerable that the employee is forced to resign. Young v. Sw. Sav. and Loan Ass’n, 509 F2d 140 (5th Cir. 1975).

Once a complainant presents a prima facie case of religious discrimination the burden shifts to respondent. Juan R. Galera, Complainant, EEOC DOC 01992382, 2001 WL 1097525 at \*3 (Sept. 6, 2001). In this case, respondent must then demonstrate by the preponderance of the evidence that either: (1) employer offered the employee an accommodation, or (2) employer could not accommodate complainant without undue hardship. 29 C.F.R. § 1605.2(b).

## V. ANALYSIS

### A. **GERA Provides Jurisdiction in this Administrative Forum to Consider the Merits of the Magistrate’s Complaint of Religious Discrimination.**

Respondents’ initial motion to dismiss was based on the argument that Complainant was excluded from coverage under Title VII of the Civil Rights Act of

1964, 42 U.S.C. § 2000e, et seq., and could not complain of religious discrimination because she was not an “employee” under that statute. The court denied that motion based on the limited facts presented at that point in this matter, holding that Complainant could not go directly to federal court under Title VII of the Civil Rights Act but may be permitted to seek relief through the EEOC administrative forum if she were able to demonstrate a constructive discharge.

Respondents now reassert their argument against jurisdiction by contending Complainant does not fit as an employee within GERA. Respondents reasserted their technical arguments contending the EEOC lacks jurisdiction because Respondents’ claim Magistrate Myrick does not fit within the class of persons allowed to assert claims of discrimination in the administrative forum permitted by GERA.<sup>13</sup> Respondents cite Gregory v. Ashcroft, 501 U.S. 452 (1991) (holding that Missouri state judges were appointees on the policy-making level and therefore exempt from coverage under Title VII). Logically, Complainant is barred from asserting a claim of discrimination in federal district court under Title VII of the 1964 Act. However, Gregory v. Ashcroft, was decided before GERA was enacted. Section 321 of GERA is entitled: “Coverage of Previously Exempt State Employees.” GERA was enacted to provide the opportunity for those previously exempt employees who were chosen or appointed by the elected official ... (1) to be a member of the elected official’s personal staff; (2) to serve the elected official on the policy-making level; or (3) to serve the elected official as an immediate advisor with respect to the exercise of the constitutional or legal powers of the office. See P.L. 102-166, 105 Stat. 1097-98 (Nov. 21, 1991).

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<sup>13</sup> See P.L. 1102-166 Section 321, Coverage of Previously Exempt state employees, 105 Stat. 1097-98 (Nov. 21, 1991) (42 U.S.C. 2000e-16c).

Magistrate Myrick was appointed by the Superior Court Judge (elected official) to serve in her magistrate position and fits within GERA's previously exempt employee provisions. The North Carolina magistrate position fits within the policy-making position as described by Gregory v. Ashcroft and its progeny. Respondents have not presented anything that identifies Complainant's position and duties as different from other positions including municipal judges that have been found to be within the policy-making exemption section.<sup>14</sup> E.g. Dyer v. Radcliffe, 169 F. Supp. 2d 770 (S.D. Ohio 2001). GERA intentionally expanded the coverage of Title VII to the three categories of state employees that were previously exempt. Reference to case law prior to 1991 may partially confuse the issue. Although some complainants have had procedural problems because they did not follow the correct administrative procedure, jurisdiction for the previously exempt employees is provided by GERA. See Spann-Wilder v. City of N. Charleston, 2010 WL 3222235 (D.S.C. 2010); see also Kelley v. City of Albuquerque, 542 F.3d 802 at n. 4 (10th Cir. 2008) (GERA confers Title VII rights on those individuals covered by exemptions 2, 3 and 4, but not the elected official herself). The focus instead should be on the employer's actions. Respondents' theory would leave victims of religious discrimination with no remedy. Such a result is directly contrary to the reason that GERA was passed into law in 1991 to fill the gap that existed under the original Title VII. See Fischer v. New York State Dept. of Law, 812 F.3d 268, 278 (2d Cir. 2016); Alaska v. EEOC, 564 F.3d 1062 (9th Cir. 2009); see also Crain v. Butler, 419 F.Supp.2d

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<sup>14</sup> Respondents also argued that North Carolina judges and magistrates have judicial immunity. I do not find this argument persuasive or to provide support for an argument against jurisdiction. Contending immunity exists conflicts with the October 14, 2014 memorandum from General Counsel Best warning judges and magistrates that they are subject to discipline, civil suit and criminal prosecution if they refuse to perform same-sex marriages.

785 (E.D. N.C. 2005).<sup>15</sup> Where an individual falls within one of the categories previously excluded from Title VII, the proper forum for a remedy is the administrative process provided under GERA. Respondents' contentions that Complainant did not directly serve the Superior Court judge that appointed her because she was supervised by Chief District Judge Gwyn does not impede jurisdiction. A close working relationship with the elected official is not required. See Spann-Wilder, supra, (majority of circuits that have ruled on the issue do not require individuals on a policy-making level to have a close working relationship with the elected official who appointed them...)<sup>16</sup> I find that Complainant is an employee under GERA and the State of North Carolina through Respondents<sup>17</sup> in their official capacity are an employer within the scope of the Civil Rights Act as amended by GERA. To find otherwise would leave Complainant with no remedy in either forum and provide the State officials immunity from action for discrimination. As discussed above, such a result would be directly contrary to the intent of Congress in enacting GERA in 1991. GERA is a remedial statute and should be interpreted to carry out its anti-discriminatory goals. Bd. of Cty. Comm'rs, Fremont Cty., Colorado v. U.S. E.E.O.C., 405 F.3d 840 (10th Cir. 2005). I find that GERA provides jurisdiction for Complainant's action.

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<sup>15</sup> Fischer and Crain, addressed a motion to dismiss and for summary judgment and were not final rulings. Although the Title VII proceedings were not dismissed from federal court, they indicate proper forum is the administrative process under GERA.

<sup>16</sup> Complainant's status within the hierarchy of the North Carolina court system appears to be somewhat similar to the position of Plaintiff Deborah Koenig in Crain, supra, who was a legal advisor for the Sheriff's staff but did not report directly to the Sheriff that appointed her. Complainant is not any elected official and not a lawyer. She was appointed by the Superior Court Judge and was not directly supervised by him. See also Spann-Wilder v. City of North Charleston, 2010 WL 3222235(D.S.C. 2010) (municipal judge considered appointed employee on the policy making level).

<sup>17</sup> At the hearing the court granted Respondents' request to substitute Judge Christopher W. Bragg in the place of Senior Resident Judge W. David Lee who no longer holds that position. Tr. I at 8-9.

## **B. Religious Discrimination**

### **1. Prima Facie case of Religious Discrimination.**

The next question is whether Complainant has presented a prima facie case of religious discrimination. Religious discrimination may be demonstrated by showing: (1) Complainant has a bona fide religious belief; (2) Complainant informed her employer of the bona fide religious belief which conflicts with an employment requirement; and (3) Complainant was subject to discipline for failure to comply with the employment requirement because of her religious belief. E.g. Opuku-Boateng v. State of Cal., 95 F.3d 1461 (9th Cir. 1996), as amended (Nov. 19, 1996).

The first element is clearly satisfied because the parties stipulated that Complainant has a sincerely held religious belief and that this belief prevents her from being a participant in a same-sex marriage. The second element is also satisfied because Magistrate Myrick clearly communicated this religious conflict to Judge Gwynn, her immediate supervisor. Finally, the third element is also satisfied because Judge Smith, as Director of the NCAOC issued an interim guidance memorandum on October 13, 2014, regarding same-sex marriage procedures and Pamela Best, General Counsel for NCAOC subsequently issued the more detailed memorandum regarding the consequences of failing to comply with the requirement for same-sex marriages as required by the federal Court ruling. Compl. Ex. 1. These memoranda were sent to all judges, clerks of Superior Court and magistrates in the State of North Carolina. The guidance to judges and magistrates made clear that they were subject to potential discipline or civil lawsuit or criminal charges if they refused to conduct a marriage for a same-sex couple. The evidence shows that Magistrate Myrick presented her resignation to Judge Gwynn only because of her sincerely held religious beliefs combined with the impact of the

memorandum from General Counsel indicating the prospective discipline and the threat of criminal prosecution or civil suit if a magistrate declined to participate in conducting such a marriage.

Judge Gwynn did not accept Complainant's resignation until after a subsequent meeting on Monday October 20, 2014. Compl. Ex. 1; Exhibit B. That meeting was also attended by Senior Magistrate Sherry Crowder, and Magistrate Gail Smith. Complainant asked for a "concession" at that meeting. Tr. I at 197-201. Judge Gwynn advised her that he found the guidance from Judge Smith and Pamela Best to leave no room for anything but compliance. Tr. I at 73.

Applying the facts of this matter to the law regarding religious discrimination, I find Complainant has satisfied her initial burden. The State of North Carolina stipulated to her sincerely held religious belief. The parties have also stipulated that Myrick's resignation was not accepted until Monday October 20, 2014. While, the October 17, 2014, meeting with Judge Gwyn was focused on Magistrate Myrick's religious conflict, the subsequent meeting on Monday October 20, 2014, with Judge Gwyn that included Senior Magistrate Crowder and Magistrate Smith was clearly intended to see if there were any alternatives for Magistrate Myrick that would permit her to continue in her job. Judge Gwyn did not have a clear memory of everything discussed at that meeting, but the testimony of Senior Magistrate Crowder regarding the request for and purpose of the October 20 meeting supports Complainant's testimony that she was seeking a concession. Although Magistrate Myrick's request for a "concession" may not have been presented with lawyerly precision, it is sufficient to constitute a request for an accommodation.<sup>18</sup> North Carolina's argument that her resignation was completely voluntary ignores both

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<sup>18</sup> E.g. Arnold C. v. Megan J. Brennan, Postmaster General, 2015 WL 7348758 (EEOC 2015) (employee not required to use the words "reasonable accommodation").



her prior service and the impact of the October 13 and 14, 2014 memoranda. Magistrate Myrick had a good work record and no reason to resign, “but for”<sup>19</sup> the change in the law that created her religious conflict and lack of any alternative to participating in a same-sex marriage as part of her duties. Judge Gwyn found the October 13 and 14, 2014 memoranda left no room for anything other than compliance with the requirement for same-sex marriage and no accommodation was offered. Therefore, I find that Magistrate Myrick’s resignation was involuntary and constitutes constructive discharge. Complainant did not have to wait until adverse action was taken against her when the lack of any accommodation was made clear. See Young, supra.

**2. Employer/Agency Obligation to Consider options for Accommodating Complainant’s religious beliefs.**

As discussed above, the parties stipulated to the fact of Magistrate Myrick’s bona fide religious belief that created the conflict with the requirement of magistrates to conduct marriages. Also as previously noted, the subsequent Supreme Court ruling of Obergefell v. Hodges, 135 S. Ct. 2584, 2594, 192 L. Ed. 2d 609 (2015) had not been issued in October 2014 at the critical time in question for this matter. However, subsequent rulings are reviewed for persuasive value on what factors should be considered for resolving the accommodation question before the court. Obergefell held the Constitution does not permit a State to bar same-sex couples from marriage, however the Supreme Court also emphasized in its decision that “[t]he First Amendment ensures that religious organizations and persons are given proper protection as they seek to teach the principles that are so fulfilling and so central to their lives and faith, ...” Obergefell, at 2607.

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<sup>19</sup> EEOC v. Abercrombie & Fitch Stores Inc., 135 S.Ct. 2028, (EEOC 2015) (failure to accommodate Muslim head scarf constituted discrimination, actual knowledge of a conflict between religious practice and work rule was not required).

Judge Smith testified that the memoranda sent out on October 13 and 14, 2014, did not provide for any accommodation for any religious beliefs regarding same-sex marriage. Tr. II at 35-36. Judge Smith also testified that if a magistrate requested an exemption and the Chief District Judge felt he could accommodate it, then it would never get to him. Id.

See also Compl. Ex.1 and 5. Judge Gwyn's view of General Counsel Pamela Best's memorandum was that it left no room for accommodation. Tr. I at 23-24; Compl. Ex. 1. Complainant was left with only two options: either comply with the requirement to perform same-sex marriages, or be subject to removal and potential criminal prosecution for refusal to perform a same-sex marriage.

The court is constrained by the requirements of Title VII and its implementing regulations. Once an individual establishes a basis for seeking an accommodation the employer is obligated to at least explore the options and provide an accommodation unless granting the accommodation would cause an undue burden. E.g. Linda Jambora, Complainant, EEOC DOC 07A40128, 2006 WL 1464830, at \*1 (May 16, 2006); see also Opuku v. California supra (state failed to show accommodation would cause undue hardship). In this matter Magistrate Myrick clearly raised the issue of her conflict between her religious belief and the magistrate job requirement to conduct a same-sex marriage. Judge Gwyn did not see any basis for non-compliance with the October 14, 2014 memorandum. Tr. I at 38. Complainant provided a resignation letter to Judge Gwyn during their discussion on Friday October 17, 2014; however, I find the resignation was not complete on that date. That same day she and Senior Magistrate Crowder contacted Judge Gwyn to see if he would reconsider the situation on Monday. Tr. I at 89-92, 112. His response was to think about it over the weekend and he agreed to meet with

the magistrates to discuss the situation further on Monday. Tr. I at 43-44; 118-123. He also sought legal advice regarding this situation during that time. On Monday October 20, 2014, Complainant returned to work and during the meeting with Judge Gwyn Magistrate Myrick sought to withdraw her resignation at least until the end of the term by a “concession” or a “work around” for her to continue with her job. Senior Magistrate Crowder was willing to adjust the marriage schedule as necessary for Myrick to avoid performing marriages at least for two months. Tr. I at 123. After discussion, Judge Gwyn declined to agree to anything, but compliance with the October 14, 2014 memorandum because he did not consider that it allowed for anything but compliance. Judge Gwyn also provided Magistrate Myrick with an acceptance of her resignation on that date.

In June of 2015, well after the implementation of the federal rulings in this case, the North Carolina Legislature passed into law Senate Bill 2 which now provides an opportunity for magistrates in North Carolina the right to recuse themselves from performing marriages based on a sincerely held religious belief. See Court Ex. II. While this statute was presented and discussed as an issue during the hearing in support of Complainant’s argument for an accommodation, it is of limited value and not directly relevant because it did not exist in 2014. Additionally, as noted by Judge Gwyn this statute is also subject to challenge and may be found unconstitutional. Similar actions exist in other jurisdictions. See e.g. Barber v. Bryant, 193 F. Supp. 3d 677 (S.D. Miss. 2016) (Granting preliminary injunction); 833 F.3d 510 (5th Cir. 2016) (denial of stay of the preliminary injunction). The Preliminary Injunction Order issued in Barber provides a well reasoned analysis of the effect of Obergefell and application of the establishment clause of the U.S. Constitution. The essence of concern is that the Government (either

federal or state) may not favor one religious view over another. In Barber the plaintiffs sought the injunction to avoid a denial of service. Id. However, determining the constitutionality of such statutes is beyond this court's authority. There is no challenge to the constitutionality of Senate Bill 2 before the court and there was no allegation of denial of service before the court. Senate Bill 2 has no direct relevance<sup>20</sup> to this case other than to be referenced as an example in support of Complainant's argument that an accommodation could have been granted.

That does not resolve the question of whether granting Magistrate Myrick an accommodation would have been an undue burden. Following the rationale articulated in Barber, neither the religious view either for or against same-sex marriage may be elevated over the other by the State of North Carolina. Pursuant to EEOC precedent and Title VII of the Civil Rights Act as amended, the North Carolina Respondents, were obligated to provide an accommodation to Magistrate Myrick unless undue burden was demonstrated. The October 14, 2014 memorandum and the consistent testimony of Judges Smith and Gwyn lead to the court's conclusion that no accommodation was considered as an option by North Carolina. Although Judge Smith reasonably perceived the effect of the federal rulings to require immediate action,<sup>21</sup> mere conclusory assertions that accommodation would have been an undue burden are insufficient when it is clear that no consideration was given at all. E.g. Opuku v. California, supra. The employer/agency bears the burden of proof on this issue and failed to provide any specific evidence in support of their position. In contrast, Senior Magistrate Crowder's

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<sup>20</sup> As an indirect matter, Complainant may potentially use Section 5 of Senate Bill 2 to seek reinstatement.

<sup>21</sup> In nautical terms the North Carolina Administrative Office of the Courts was placed in extremis. Immediate action was apparently necessary and a failure to act would likely have had adverse consequences.

testimony indicates she could have managed the marriage docket to accommodate Complainant's request at least until the end of her appointment in December. Tr. I at 87-92. Judge Gwyn did not provide any opportunity for accommodation and no evidence of an undue burden. I find Magistrate Myrick's employers named in their official capacities for the State of North Carolina failed to provide an accommodation as required by 29 C.F.R. § 1605.2 (Reasonable accommodation without undue hardship and failed to provide sufficient evidence that granting accommodation would be an undue burden).

**C. Was Complainant Required to be Placed in Jeopardy of Termination, Lawsuit and Criminal Charges to Constitute an Adverse Employment Action?**

Respondents contend Complainant's resignation was voluntary and therefore she did not have an adverse personnel action. However, under certain circumstances a resignation or retirement may be involuntary and considered as a constructive discharge of an employee, subject to review and consideration on the merits.

**1. Involuntary Resignation/Constructive Discharge**

To demonstrate her resignation was involuntary and constituted a constructive discharge Complainant needs to demonstrate (1) a reasonable person in complainant's position would have found the conditions intolerable; (2) conduct that constituted discrimination against the complainant created the intolerable working conditions; and (3) the complainant's involuntary resignation resulted from the intolerable working conditions. See Walch v. Dep't of Justice, EEOC Request No. 05940688, 1995 WL 242586; Young v. Southwestern Savings & Loan Assn, 509 F.2d 140 (5th Cir. 1975).

The evidence shows that Magistrate Myrick had no disciplinary problems and her supervisor was pleased with her performance. Prior to the federal court rulings, there was no conflict with the performance of her duties and her religious beliefs because North

Carolina law did not provide for same-sex marriage. In October 2014, the conditions of her employment changed because of the binding federal court rulings followed by the notice provided by Judge Smith on October 13, 2014, and the memorandum issued by North Carolina General Counsel Pamela Best on October 14, 2014. Magistrate Myrick testified that upon reading these notices she determined her religious beliefs would prevent her from being a participant in a same-sex marriage ceremony. There is no dispute regarding the validity of Complainant's religious beliefs and the religious conflict in question and the parties stipulated to that fact. See Court Ex. I. As a result of this situation Magistrate Myrick met with her Supervisor Judge Gwyn to inform him she would be unable to continue her service as a magistrate, because her religious beliefs conflicted with the new requirement to perform same-sex marriages and she provided him with a letter of resignation because of that conflict and the lack of any other option in view of the North Carolina Administrative Office of the Courts Guidance. Respondents argue that Myrick's resignation presented to her supervisor was voluntary and there was no adverse personnel action taken against her. When, as part of their employment, an employee is required to participate in a manner contrary to their religious beliefs, it constitutes a valid basis for finding a constructive discharge occurred. See Young v. Southwestern Sav. And Loan Assn'n, 509 F.2d at 143(employer requirement to attend meetings that included religious talks and prayers held to constitute constructive discharge of atheist); Arnold C. v. Megan J. Brennan, Postmaster General, 2015 WL 7348758 (EEOC). Here, the memoranda from Judge Smith and General Counsel Pamela Best as followed by Judge Gwyn, failed to provide for any opportunity for accommodation of an employee magistrate's religious belief. The Questions and Answers portion of the memorandum included the following:

Question 2: What if a magistrate refuses to perform same-sex marriages?

Answer: If a magistrate refuses to discharge the duties of his or her office, including a refusal to perform a marriage of a same-sex couple, that refusal is grounds for suspension or removal from office, as well as, potential criminal charges. If any magistrates "...shall willfully omit, neglect or refuse to discharge any of the duties of his office ... he shall be guilty of a class 1 misdemeanor." G.S. 14-230. Our case law makes clear that this criminal provision remains enforceable in addition to the procedures for suspension and removal under G.S. 7A-173.....

Compl. Exhibit 1.

The memorandum goes into further details that make it abundantly clear that: (1) North Carolina magistrates were now required to conduct same-sex marriages upon presentation of a marriage license; (2) magistrates who refused would be subject to discipline and potential criminal charges; and (3) the Attorney General was likely to refuse to represent a magistrate who refused to conduct such a marriage. Compl. Ex. 1. Judge Gwyn testified he found no room for accommodation for Complainant. Tr. I at 23-24, 43-45. Similar to Young, there is no dispute over the existence of a bona fide/sincere religious belief that conflicts with a job requirement. The implementation of the federal rulings in North Carolina through the memorandum from Judge Smith and the memorandum from the General Counsel explaining the consequences for failure to comply combined with the indication there was no possibility of accommodation and as implemented by Judge Gwyn constitutes a constructive discharge. E.g. Arnold C. v. Megan J. Brennan, Postmaster General, 2015 WL 7348758 (EEOC). A person with Magistrate Myrick's religious beliefs would expect that she would be subject to removal and criminal prosecution if she refused to conduct a same-sex marriage in keeping with her religious beliefs. Where a constructive discharge occurs, an employer may be held accountable for illegal or improper conduct as if the employer had formally discharged the employee.

## **VI. ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. GERA provides jurisdiction to address Complainant's action seeking relief from religious discrimination pursuant to 42 U.S.C. §§ 2000e-16b, 2000e-16c.
2. Complainant has sincerely held religious beliefs that conflict with an employment requirement.
3. Complainant demonstrated she was constructively discharged because of a changed employment requirement that conflicted with her religious beliefs and declining to perform it would subject her to removal and potential criminal charges.
4. Respondents failed to present sufficient evidence that providing an accommodation of Complainant's religious beliefs to the end of her term created an undue burden.
5. Complainant requested an accommodation for several months to complete her term of office.

## **VII. CONCLUSION**

Complainant's claim of discrimination by Respondents, in their official capacities, for the State of North Carolina, for failure to accommodate her religious beliefs is **PROVED**.

## **VIII. REMEDY**

Complainant met her burden to show: (1) that she was constructively discharged; and (2) she was never offered an accommodation. The Respondents (employer) bore the burden of demonstrating that an accommodation would have imposed an undue burden on North Carolina. The evidence of Complainant's request for accommodation in October 2014 shows that she sought an accommodation to the end of her term and indicated she did not want to create a problem for the other magistrates in her office. Magistrate Crowder's testimony is also consistent with Complainant's testimony since she had indicated should could manage the marriage docket for two months and through the holidays to provide a work around for Magistrate Myrick.



Where discrimination is found proven, the EEOC regulations provide for remedies to restore the individual to the position he or she would have occupied in the absence of discrimination. 29 C.F.R. § 1614.501.<sup>22</sup>

Here, Complainant requests the follow forms of relief: 1) back pay; 2) pain and suffering and emotional distress; 3) attorneys' fees; and 4) reinstatement. However, neither party fully briefed what would constitute restoring Magistrate Myrick to the position she would have occupied if given an accommodation. Therefore, further action by the parties including briefing is needed to determine the appropriate relief due.

**A. Back Pay**

Within fifteen (15) calendar days of the date this decision, the parties shall confer to determine the appropriate amount of back pay, with interest, and other benefits due to Complainant, pursuant to 29 C.F.R. § 1614.501. Complainant shall cooperate in North Carolina's efforts to compute the amount of back pay and benefits due, and shall provide all relevant information requested by Respondents or North Carolina State officials. If the parties cannot agree as to the appropriate amount of back pay, particularly whether Complainant should be awarded back pay because she would have been reappointed after her term expired, Complainant shall brief the issue to the court within thirty (30) days of the date of this Order. Respondent shall have fifteen (15) days from service of Complainant's brief to file its response.

Under the make whole doctrine, Complainant is entitled to pay starting from the day she submitted her involuntary resignation to the end of her term as a magistrate. Had Complainant maintained her employment to the end of her term, she would have received

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<sup>22</sup> See also Marion Cty. Coroner's Office, Appellant, EEOC DOC 1120080001, 2009 WL 2869817, at \*1 (Aug. 24, 2009) (rev'd in part on other grounds by Marion Cty. Coroner's Office v. E.E.O.C., 612 F.3d 924 (7th Cir. 2010)).

these monies if Respondents had not denied her religious accommodation request. The “make whole” doctrine requires the employer compensate the employee for the lost wages.

Whether Magistrate Myrick is entitled to any additional back pay, up and to the date of this Order, depends on whether Complainant would have been reappointed notwithstanding her involuntary resignation (which resulted from Respondents’ failure to grant an accommodation). There is evidence in the record that in the absence of the involuntary resignation, Complainant’s performance would have resulted in reappointment. Therefore, in the absence of a basis to find Complainant would not have been reappointed, Complainant may also be entitled to all pay up and to the date of this Order.

In reviewing the amount of appropriate back pay, the parties shall also consider the authority controlling mitigation. Cynthia N. Mullins, Appellant, EEOC DOC 01954362, 1997 WL 291768, at \*5 (May 22, 1997).

**B. Pain and Suffering and Emotional Distress**

Complainant’s request for compensation for pain and suffering and emotional distress is denied. The court notes Complainant has the burden of proving damages by offering information and supporting evidence on damages and causation. Rivera v. Department of the Navy, EEOC Appeal No. 01934157 (July 22, 1994); see also Carle v. Department of the Navy, EEOC Appeal No. 01922369 (January 5, 1993); Yvette Bowman, Appellant, EEOC DOC 01953933, 1995 WL 645523, at \*3 (Oct. 20, 1995).

Here, I find Complainant failed to provide any evidence of pain and suffering and emotional distress sufficient to award her with any damages.

### **C. Attorney's Fees**

Complainant is entitled to attorney's fees because she prevailed on her claim in this matter. In Carol Marshall, Complainant, EEOC DOC 0720080008, 2009 WL 3845819, at \*6 (Nov. 5, 2009), the Commission noted a complainant's entitlement to an award of attorneys' fees and costs for the successful processing of an EEO complaint under GERA. See 42 U.S.C. § 2000e-16(c)(e). The fee award is ordinarily determined by multiplying a reasonable number of hours expended on the case by a reasonable hourly rate, also known as the "lodestar." See 29 C.F.R. § 1614.501(e)(2)(ii)(B); *Bernard*, EEOC Appeal No. 01966861 (*citing Blum v. Stenson*, 465 U.S. 886 (1984)); Carol Marshall, Complainant, EEOC DOC 0720080008, 2009 WL 3845819, at \*5 (Nov. 5, 2009).

As requested in Complainant's brief, the court will entertain additional, post-decision, briefing on this matter. The parties shall have fifteen (15) days from the date of this Order to reach an agreement on the amount of attorneys' fees owed to Complainant. If the parties cannot agree on the appropriate amount of attorneys' fees, Complainant's counsel, within thirty (30) days of this Order, **SHALL PRODUCE TWO** detailed, itemized logs describing each billable task taken during the course of representing Magistrate Myrick in this proceeding.

The first log, which may be redacted to the extent it reveals privileged information, must be provided to Respondents for consideration. The second, un-redacted log must be produced to the court for consideration of the final award for attorneys' fees. Both logs shall include an hourly rate and specify the hours expended on each task, along with counsels' sworn statement attesting to the truth and accuracy of the logs. Complainant's counsel shall also produce, through case-law or other authority,

comparable hourly rates charged by attorneys in a similar locale to the Complainant. Respondents shall have fifteen (15) days from service of Complainant's logs to provide any objections.

**D. Reinstatement**

Complainant also asks the court to order Respondents to reinstate her as a magistrate. The EEOC has explicitly held, a “[c]omplainant is entitled to reinstatement to the position he held at the time of the discrimination, or a substantially equivalent position, retroactive to the date Complainant's employment was terminated. Vonville v. U.S. Postal Serv., EEOC Appeal No. 0120080116 (Aug. 2, 2010). Brennan v. USPS EEOC, 0120123462, 2015 WL 5000697, at \*3 (Aug. 14, 2015). However, the record is unclear whether North Carolina has any positions Complainant may fill.

As noted above determining appropriate relief requires further action. The parties shall confer and determine: 1) whether the North Carolina has a position where Complainant could be reinstated; 2) whether any alternative relief may be had if a position is not available. See e.g., Birsén Romero, Appellant, EEOC DOC 01921636, 1992 WL 1371184, at \*7 (July 13, 1992). If the parties cannot reach an agreement on this issue, Complainant shall within 30 days brief the court on its position concerning reinstatement. Respondents shall have fifteen (15) days from service of Complainant's brief to file a response.

## **IX. ORDER**

After reviewing all of the evidence in the record, and resolving factual disputes as discussed above, the court finds further briefing is necessary to determine the appropriate remedy in this case. Therefore, it is hereby ordered as follows:

### **BACK PAY**

1. Within fifteen (15) calendar days of the date this decision, the parties shall confer to determine the appropriate amount of back pay, with interest, and other benefits due to Complainant, pursuant to 29 C.F.R. § 1614.501. Complainant shall cooperate in North Carolina's efforts to compute the amount of back pay and benefits due, and shall provide all relevant information requested by Respondents or North Carolina State officials. If the parties cannot agree as to the appropriate amount of back pay, particularly whether Complainant should be awarded back pay because she would have been reappointed after her term expired, Complainant shall brief the issue to the court within thirty (30) days of the date of this order. Respondent shall have fifteen (15) days to file a brief addressing its objections to Complainant's position concerning back pay.

### **ATTORNEYS' FEES**

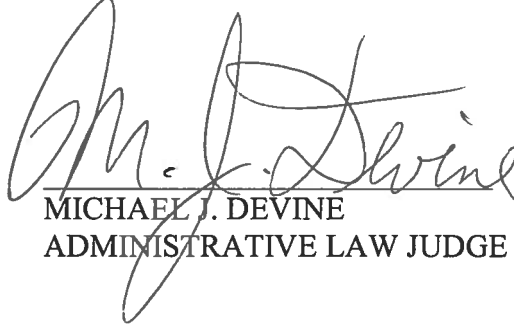
2. An attorney represented Complainant during these proceedings. Therefore, she is entitled to an award of reasonable attorneys' fees incurred during this litigation. 29 C.F.R. § 1614.501(e). The parties shall have fifteen (15) days to reach an agreement on the amount of attorneys' fees. The parties shall cooperate in determining reasonable attorney fees. If the parties do not reach agreement, post-decision, briefing on this matter shall be conducted as stated in Section VIII C. above.

### **REINSTATEMENT**

3. The court will allow 15 days from the date of this Order for the parties to determine: 1) whether the North Carolina has a position where Complainant could be reinstated; 2) whether any alternative relief may be had if a position is not available. See e.g., Birsén Romero, Appellant, EEOC DOC 01921636, 1992 WL 1371184, at \*7 (July 13, 1992). If the parties fail to reach an agreement concerning reinstatement and/or an alternative remedy, Complainant shall have thirty (30) days from the date of this decision to file a brief supporting its position concerning reinstatement. Respondents shall have fifteen (15) days from service of Complainant's brief to file its response.

**PLEASE TAKE NOTICE**, this decision is **NOT FINAL** and appealable. A final decision will follow once the parties follow the briefing schedule set forth above. Once the court calculates a final determination of appropriate relief, another order will issue setting forth the appeal rights applicable in this matter.

FOR THE COMMISSION:



MICHAEL J. DEVINE  
ADMINISTRATIVE LAW JUDGE

Done and dated March, 8, 2017,  
Baltimore, MD

## **ATTACHMENT A**

### **Witness and Exhibit Lists**

#### **Complainant Witnesses**

1. Judge N. Hunt Gwyn
2. Senior Magistrate Sherry Crowder
3. Ronald J. Shigley
4. Gail Smith
5. Judge Marian R. Warren
6. Sandra G. Myrick (Complainant)

#### **Respondent Witnesses**

None

### **EXHIBIT LISTS**

#### **Complainant (Myrick) Exhibits**

- Ex. 1: Pamela Best, General Counsel Memo of October 14, 2014
- Ex. 2: Calendar (Magistrate schedule) (January 2010 through December 2014)
- Ex. 3: Magistrates 5 week work schedule (Hunt)
- Ex. 4: Feb. 14, 2013 Memo on Policies and Procedures from S. Crowder
- Ex. 5: Judge Smith, Director of Administrative Office of the Courts Memo on same-sex marriages dated October 13, 2014
- Ex. 6: Transcript of August 8, 2016 Motions hearing in Ansley v. Warren, Civil Action No. 16-CV-54 in U.S. District Court (W.D. N.C.)
- Ex. 7: Magistrate work Schedule 3-22-12 for April, May, June
- Ex. 8: E-Mail from Pamela Best October 14, 2014, sending out memo on same-sex marriage
- Ex. 9: Warrant Repository (Magistrate Myrick records)
- Ex. 10: Outline on performing marriages (Script)
- Ex. 11: Administrative Orders regarding Magistrates in Union County

Ex. 12: Pamela Best, Deposition

Ex. 13: Email from Judge Smith to Fred Wilkins October 24, 2014

Ex. 14: Draft letter to Senator Berger and Representative Stam

Ex. 16: Email from Pamela Best October 25, 2014, regarding Judge Smith providing notice of receipt of letter from Senator Berger

Ex. 17: Email dated October 30, 2014, between Judge Smith and Magistrate Phillips regarding same-sex marriage requirements

Ex. 18: Email of January 29, 2015, from Sharon Gladwell regarding response to reporter

Ex. 19: Spreadsheet list of Magistrates that were separated from service in fall of 2014 with some indicating due to same-sex marriage issue

Ex. 20: Memorandum of Decision and Order from U.S. District Court (W.D.N.C.) by Judge Cogburn dated October 10, 2014, ruling that any bars to same-sex marriage in North Carolina are unconstitutional and enjoining any action to prevent such marriages

Ex. 21: AOC Payment records

Ex. 22: University of North Carolina School of Government Blog 11/3/14 regarding magistrates and same-sex marriage

Ex. 23: University of North Carolina School of Government Blog 10/16/14 same-sex marriage

Ex. 24: Email from Representative Stam to Judge Smith regarding same-sex marriage and magistrate objections

#### **Respondents (North Carolina Officials) Exhibit List**

Resp. Ex. A: Resignation letter from Magistrate Myrick dated October 17, 2014

Resp. Ex. B: Letter from Judge Gwyn accepting Magistrate Myrick's resignation effective October 20, 2014

#### **COURT EXHIBITS**

Exhibit I: Joint Stipulations of the parties regarding matters not in dispute

Exhibit II: Senate Bill 2 (North Carolina)



## CERTIFICATE OF SERVICE


I hereby certify that I have served the foregoing Order upon the following parties in this proceeding as indicated below:

ALJ Docketing Center  
United States Coast Guard  
40 South Gay Street, Room 412  
Baltimore, Maryland 21202-4022  
Telephone: (410) 962-7434  
Facsimile: (410) 962-1746  
Email: aljdocketcenter@uscg.mil  
**Served Electronically**

Kathryn Shields, Esq.,  
Grady L. Balentine, Jr., Esq.,  
North Carolina Dept. of Justice  
Counsel for Respondents  
P.O. Box 629  
Raleigh, North Carolina 27602  
kshields@ncdoj.gov  
gbalentine@ncdoj.gov  
**Served electronically**

Done and dated March 8, 2017,  
Baltimore, Maryland

Joe Thomas Knott, III, Esq.,  
W. Ellis Boyle, Esq.,  
4800 Six Forks Road, Suite 100  
Raleigh, NC 27609  
joeknott@knottboyle.com  
ellis@knottboyle.com  
**Served electronically**

  
Ericka J. Davis, Paralegal Specialist to the  
Administrative Law Judge  
U.S. Coast Guard  
U.S. Custom House  
40 S. Gay Street, Room 413  
Baltimore, MD 21202  
Phone: (410) 962-0869  
Fax: (410) 962-5115