

BEFORE THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS  
STATE OF WYOMING

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

TRANSCRIPT OF RECORDED COMMISSION MEETING PROCEEDINGS

Transcript of Recorded Commission Meeting  
Proceedings on the above-entitled matter held on the 19th  
day of February, 2016, before the Commission on Judicial  
Conduct and Ethics, Chairman Kerstin Connolly presiding,  
with Panel Members Mel Orchard, Scott Ortiz, Donna Cay  
Heinz, Mary Flitner, Judge Norm Young, Judge Wade Waldrip,  
Judge Wendy Bartlett, Barbara Dilts, Leslie Petersen and  
Karen Hayes (by telephone) in attendance.

Also present was Wendy Soto, Executive Director  
to the Commission.

## A P P E A R A N C E S

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1 CHAIRMAN CONNOLLY: We're called to order.  
2 Wendy, will you please do roll call for members.  
3 MS. SOTO: Yes. Kerstin Connolly.  
4 CHAIRMAN CONNOLLY: Here.  
5 MS. SOTO: Mel Orchard.  
6 MR. ORCHARD: Here.  
7 MS. SOTO: Scott Ortiz.  
8 MR. ORTIZ: Here.  
9 MS. SOTO: Leslie Peterson.  
10 MS. PETERSEN: Here.  
11 MS. SOTO: Donna Cay Heinz.  
12 MS. HEINZ: Here.  
13 MS. SOTO: Wendy Bartlett.  
14 JUDGE BARTLETT: Here.  
15 MS. SOTO: Mary Flitner.  
16 MS. FLITNER: Here.  
17 MS. SOTO: Barbara Dilts.  
18 MS. DILTS: Here.  
19 MS. SOTO: Norm Young.  
20 JUDGE YOUNG: Here.  
21 MS. SOTO: Wade Waldrip.  
22 JUDGE WALDRIP: Here.  
23 MS. SOTO: And Karen Hayes.  
24 MS. HAYES: Here.  
25 CHAIRMAN CONNOLLY: Okay. I do find that

1 we have a quorum for the Commission today. So the purpose  
2 of today's meeting is pursuant to our rules, the  
3 adjudicatory panel already found that, according to Wyoming  
4 law, Wyoming recognizes same-sex marriage, solemnizes  
5 matrimony in a judicial function. Judge Neely's statements  
6 violated the Wyoming Code of Judicial Conduct, Rule 1.1,  
7 compliance with the law; Rule 1.2, promoting confidence in  
8 the judiciary; Rule 2.2, impartiality and fairness; Rule  
9 2.3, bias, prejudice and harassment.

10 Pursuant to Commission Rule 16(e), "...the entire  
11 Commission shall convene to determine the nature of the  
12 sanctions to be imposed.... Upon a majority vote of the  
13 entire Commission, the Commission shall make its  
14 recommendation for censure, removal or retirement,  
15 including imposition of monetary sanctions...."

16 So I would refer the Commission to Rule 8(d)(2)  
17 when we are considering what sanctions are appropriate, and  
18 I'm going to go ahead and read that rule for you guys.

19 "In determining the appropriate sanction, the  
20 adjudicatory panel may consider the following nonexclusive  
21 factors: The nature, extent and frequency of the  
22 misconduct; the judge's experience and length of service on  
23 the bench; whether the conduct occurred in the judge's  
24 official capacity or private life; the nature and extent to  
25 which the acts of misconduct injured other persons or

1 respect for the judiciary; whether and to what extent the  
2 judge exploited his or her position for improper purposes;  
3 whether the judge has recognized and acknowledged the  
4 wrongful nature of the conduct and manifested an effort to  
5 change or reform the conduct; whether there has been prior  
6 disciplinary action concerning the judge, and if so, its  
7 remoteness and relevance to the present proceeding; whether  
8 the judge complied with prior discipline and requested and  
9 complied with the formal ethics advisory opinion; whether  
10 the judge cooperated fully and honestly with the Commission  
11 in the proceeding; and whether the judge was suffering from  
12 personal or emotional problems or physical or mental  
13 disability or impairment at the time of the misconduct.

14 "The ABA Standards for Imposing Lawyer Discipline  
15 may be considered in determining the appropriate sanction."  
16 So those are the items that we can consider.

17 So I guess at this time I'm going to turn the  
18 floor over to Disciplinary Counsel, and each side has 30  
19 minutes to present their argument, and if you would  
20 introduce yourselves.

21 MR. DIXON: I'll do it. I'm Pat Dixon.  
22 I'm contracted as Disciplinary Counsel in this matter. My  
23 associate Britney Turner is to my right. Britney has done  
24 a lot of the briefing and the legwork on this, and so she's  
25 going to listen in.

1           You know, I thought a lot about -- about what to  
2 say here and what to do here today, and -- and I -- and I  
3 kind of came down on -- as you probably, most of you, know,  
4 I sat on the Commission for six years, the two full terms,  
5 and I think maybe I'd just kind of like to talk to you as  
6 if I was in your chair as -- as a commissioner, rather than  
7 make an argument or harangue you with cases and statistics,  
8 whatnot.

9           I had a couple of random thoughts, and the first  
10 one isn't new or particularly original. I've said this  
11 before. I -- if Judge Neely had refused to perform, say, a  
12 mixed-race marriage or to perform marriages for a Hispanic  
13 couple or a Jewish couple, I don't -- we wouldn't be here.  
14 There wouldn't be an argument. There wouldn't be a  
15 discussion about this. In fact, what she did is refuse to  
16 perform marriage ceremonies for -- for same-sex couples.  
17 And under our code of ethics, sexual orientation has the  
18 same protection or status as race, gender, religion and so  
19 forth. It is unethical for a judge in the state of Wyoming  
20 to show bias or prejudice based on sexual orientation. And  
21 I submit to you that's what happened here, and that's what  
22 the A panel found.

23           The other kind of random thought came to me last  
24 night. I -- you know, in the course of this process, I've  
25 made quite a study of this particular situation. And it

1 occurs to me that around this country there must be  
2 thousands, if not tens of thousands of judges who have the  
3 same, quote, sincere religious conviction about gay  
4 marriage as Judge Neely.

5 But in my study, I've only found two that have  
6 gotten in trouble with their ethics commission. There was  
7 this Judge Tabor up in Washington and this character who  
8 just within the last month over in Oregon was -- was  
9 removed from office. And I'll talk about those two cases a  
10 little bit later.

11 And the third person is Judge Neely. So, you  
12 know, all of these other judges have been able to, faced  
13 with that same kind of a dilemma that she professes to  
14 have, moral dilemma, have been able to navigate through  
15 that and honor their Code of Judicial Ethics, Judge Neely  
16 being the third exception.

17 What we're here about today -- let me talk about  
18 what we're not here about. We're not here to talk about  
19 whether there has been an ethical violation. A  
20 determination has been made by the adjudicatory panel.

21 We're not here to talk about religious  
22 expression. This is not about freedom of religion. Judge  
23 Neely's free to exercise whatever religious beliefs she  
24 feels are appropriate. But when she puts on the robe, she  
25 forfeits the right to proselytize those beliefs in public

1 in the manner that she did.

2 And third, this isn't about constitutional  
3 rights. The cases are exceedingly clear that those  
4 constitutional rights to freedom of expression and so forth  
5 go out the window when the judge puts on the robe. The  
6 judge -- you don't have to be a judge, but if you're a  
7 judge, you give up some of those First Amendment rights of  
8 freedom of speech.

9 So what this is about is the A panel having  
10 determined that there's been an ethical violation. It's  
11 about the appropriate sanction that should be applied.

12 If you'll give me just a minute and let me nudge  
13 you judges aside here and turn on my projector. I just did  
14 a very brief -- where is our plug?

15 I did just a very brief PowerPoint so that we  
16 have those 11 criteria in front of us when we talk. This  
17 will take just a second.

18 Okay. Here it comes. I think it will get  
19 brighter. That for the record is Chuck and Berry helping  
20 me fish the Green River.

21 All right. So Rule 8, 8(d)(2) sets forth, as  
22 Kerstin has just read to you, sets forth 11 different  
23 criteria to evaluate when you talk about sanctions. The  
24 first of those in subparagraph (A) is "The nature, extent  
25 and frequency of the misconduct." In this instance, we



1 really only have an isolated instance, so to some extent, I  
2 guess, that weighs in as a mitigating factor. However, I  
3 did cite to you in my memorandum a case also within -- I  
4 think it was decided in December down in Florida where the  
5 Court said that there doesn't have to be a pattern of  
6 misconduct, and that even notwithstanding the fact that a  
7 judge has a long and good record, depending on the nature  
8 of the misconduct, a single instance would justify removal  
9 from office.

10           You want to run this? Yeah, just click on the  
11 next one.

12           And so then the next factor to consider is -- is  
13 Subparagraph (B), "The judge's experience and length of  
14 service on the bench." And as I know you'll hear from  
15 counsel, Judge Neely has a long, lengthy career on the  
16 bench and considerable experience. So I think that factor  
17 probably weighs in her -- in her benefit.

18           Judge, if we go to the -- if we go to (C),  
19 "Whether the conduct occurred in the judge's official  
20 capacity or private life." I know that the judge will  
21 argue that, well, this is something that happened in her  
22 private life because it happened on a Sunday afternoon at  
23 her home while she was hanging Christmas lights, but first  
24 of all, the A panel has found -- that's a specific finding  
25 after hearing the evidence and reading the briefing -- that

1 it occurred in her official capacity.

2 Secondly, when I took her deposition, she  
3 admitted, she conceded to me that she had made these  
4 comments in her official capacity as a judge.

5 And finally, common sense dictates to you that  
6 this wasn't just a private utterance; that she was speaking  
7 as -- as the judge. According to Judge Haws, she's  
8 appointed specifically to do weddings in Sublette County.  
9 That's her primary function. It is an essential function  
10 of her job, and common sense tells us that this newspaper  
11 reporter didn't call her because he was taking a public  
12 survey opinion. He called her because she was the wedding  
13 judge in Sublette County, and she made those comments in  
14 her capacity as a judge. So that factor weighs against  
15 her.

16 The next one is "The nature and extent to which  
17 the acts of misconduct injured other persons or respect for  
18 the judiciary." And I submit to you that you can make that  
19 determination based on the record that's before you.

20 I think that her comments did both things. I  
21 think that it injured other persons. I think that it  
22 caused injury to members of the LGBT community. Remember  
23 the timing of this, not being able to get the legislature  
24 to act on this and take it to the courts, and in October of  
25 last year Judge Skavdahl said this is now the law of the

1 land, and within a month of that they read in a -- in a  
2 newspaper and it circulates through public media that we  
3 have a judge that now won't honor that law and won't afford  
4 them the constitutional rights that the courts have  
5 recognized.

6 And I submit to you that when you read Ana  
7 Cupril's deposition and had you wanted to hear from  
8 Mr. Oleson, who is a vocal member of the LGBT community,  
9 they will tell you this caused considerable consternation.

10 Beyond that, I think it lowers the general  
11 public's respect for the judiciary when we have a judge  
12 making what certainly can be perceived by many as  
13 discriminatory comments and saying in so many words I'm  
14 going to pick and choose which laws I want to follow. And  
15 I think that that -- that that's a great harm to the  
16 reputation of the judiciary, and that's what you guys are  
17 all about. That's really what you're here to do is to --  
18 is to uphold the respect the judiciary has held in the  
19 state. So this factor weighs very much against Judge  
20 Neely.

21 The next -- Sub (E), "Whether and to what extent  
22 the judge exploited his or her position for improper  
23 purposes." Well, you know, clearly she didn't gain  
24 financially or in that kind of tangible -- tangible manner,  
25 but she -- there must have been some -- some gain to her to

1 pick a public forum to express her particular views about  
2 marriage and about religion.

3 If we can go to the next one. God dang. (F),  
4 and I think this is an important one, and I know counsel is  
5 going to argue why you shouldn't take -- take this one  
6 seriously, but Sub (F) talks about "Whether the judge has  
7 recognized and acknowledged the wrongful nature of the  
8 conduct and manifested an effort to change or reform  
9 conduct."

10 Well, Judge Neely has absolutely not recognized  
11 or acknowledged an ethical violation in this instance. She  
12 has, as we'll talk about further, she has fought this thing  
13 every step. She has argued that -- notwithstanding that  
14 there's no question about what happened, what she did or  
15 what she said, she has argued it's not an ethical  
16 violation. She has argued that her constitutional rights  
17 trump the Code of Judicial Ethics and that she's privileged  
18 to make these statements in a newspaper in the manner in  
19 which she did.

20 I reference and I talked about it in some detail  
21 this Tabor case. Judge Tabor was a district court judge up  
22 in the state of Washington, and shortly after the state of  
23 Washington passed a law authorizing same-sex marriage, he  
24 came out and made similar comments to Judge Neely. The  
25 Washington Ethics Commission found clearly those were

1 ethical violations. They elected to publicly reprimand as  
2 opposed to remove Judge Tabor.

3 And the reason they did that is because Judge  
4 Tabor recognized and accepted that he should not have made  
5 those comments in public and that those comments  
6 constituted an ethical violation. And rather than fight  
7 his supervisory commission, Judge Tabor came to them, and  
8 they entered into a stipulated agreement acknowledging the  
9 wrongdoing, and on that basis he received a reprimand.  
10 That hasn't happened in this case.

11 Secondly, I -- and I think the second distinction  
12 as long as we're on Tabor, that was the first one of these  
13 opinions that came out. I don't think Washington would  
14 come to the same sanction disposition were they to talk to  
15 Judge Tabor today, and that's because since Tabor we've had  
16 six other advisory commissions or Supreme Court opinions  
17 come down, and they say clearly this is an ethical  
18 violation. And I -- I just don't think we'd get to the  
19 same result were Tabor to come before the Washington  
20 Commission today.

21 The next one that we have is "Whether the judge  
22 complied with prior discipline or requested and complied  
23 with a formal ethics advisory opinion." That's kind of a  
24 nonfactor in this case. It's clear and I won't dispute  
25 Judge Neely has not been disciplined previously. There

1 haven't been prior orders for her to comply with or not  
2 comply with, and I will also agree that there were no  
3 formal Wyoming ethics opinions out there for her to look  
4 at, although there were some had she -- had she done some  
5 research, she could have found advice through the Center  
6 for court -- State Court Commissions.

7           Counsel argues in their memorandum that she was  
8 proactive in terms of seeking an advisory opinion, but I  
9 submit to you that's not true. She wasn't proactive.  
10 Guzzo came out in October. She knew immediately she had  
11 this ethical dilemma. She went and talked to Judge Haws.  
12 She didn't write for an opinion at that time. She  
13 waited -- two months go by after Guzzo, and then she makes  
14 these statements. Before she makes the statement she  
15 doesn't ask for an opinion. After the statements come out,  
16 recognizing maybe she's got a problem, another month goes  
17 by. She asks for an opinion, but at that point these  
18 proceedings had commenced, and according to the Advisory  
19 Commission's rules, they don't give an opinion once a  
20 proceeding is on the table. So I don't think she was  
21 proactive, and I don't think that she can argue that that's  
22 a mitigating factor.

23           The next one is "Whether the judge cooperated  
24 fully and honestly with the Commission in the proceeding."  
25 Obviously she has not cooperated. She has fought this

1 Commission tooth and nail, which is her right, but that's a  
2 factor for you to consider in imposing sanctions.

3 And has she been fully honest with this  
4 Commission? I would submit to you that she has not. When  
5 she responded to the initial inquiry, she wrote in a letter  
6 to you folks that when this happened she was distracted by  
7 other matters. And the way I read what she wrote to you,  
8 there's a clear inference that she intends to put out that,  
9 you know, she was distracted and had other things on her  
10 mind, and she just sort of inadvertently blurted out these  
11 comments to Mr. Donovan, but that's not what happened. She  
12 was out hanging up Christmas lights. I don't know if  
13 that's a distraction or not. She noticed on her cell phone  
14 that this reporter had called her, and so she called him.  
15 He didn't call her. And they didn't have one conversation.  
16 They had three conversations over the course of that  
17 afternoon in which she had a chance to correct this  
18 problem, and she didn't do that. And she didn't -- as I  
19 say, she didn't disclose that. She was not forthright  
20 about that. And it took me taking her deposition for that  
21 to come to light.

22 So those are the -- those are the factors.

23 The sanctions available, I think this is clear in  
24 the rules. We can do private reprimand, public reprimand,  
25 suspension or removal. Those are -- those are the things

1 on the table. If you're going to do anything besides the  
2 private reprimand, you have -- that has to be in the form  
3 of a recommendation to the Supreme Court.

4 In addition to that, this Commission can and I --  
5 I submit should impose monetary sanctions under Rule 6(c)  
6 and 16(e).

7 Historically -- and I know for a fact that this  
8 is how the Bar Association works when sanctioning  
9 attorneys, but historically it's also worked this way with  
10 the Commission, sanctions have -- monetary sanctions have  
11 been in the approximate amount of the attorney fees  
12 incurred by the Commission in prosecuting the matter.

13 I will tell you I've submitted billings in the  
14 amount of about 37,000. By the end of this phase it's  
15 going to be closer to 40,000. And I'll tell you this, if I  
16 billed 40,000, I did \$80,000 worth of work. I've not  
17 charged for Britney's time. So those things I'd ask you to  
18 consider in making your recommendation, if any, to the  
19 Supreme Court.

20 By way of conclusion -- and I should have a few  
21 more minutes I can save in rebuttal -- I don't think that  
22 Judge Neely has left you any choice except to remove her  
23 from office, and I say both the commissioner's position and  
24 the municipal court judge. She has stated that she will  
25 not honor the law of Guzzo v. Mead, she will not perform



1 gay marriages, and I don't know how you can put her -- let  
2 her stay on the bench. And she's not going to change that  
3 position. And so I -- I just don't know how you can allow  
4 a judge who has publicly stated and continues to state that  
5 she has a right to pick and choose which laws to apply.

6 The ethical rules say that the judge shall apply  
7 the laws, all of the laws, not the ones they like or don't  
8 like.

9 So I'll answer questions. If I have time left,  
10 I'll respond to counsel's comments.

11 CHAIRMAN CONNOLLY: Thank you, Mr. Dixon.

12 Gentlemen, will you please introduce yourselves  
13 to the Commission.

14 MR. DOBY: I'm Herb Doby from Torrington,  
15 and I'm local counsel for Judge Neely.

16 MR. CONNELLY: I'm Ken Connelly. I'm one  
17 of the other attorneys representing Judge Neely.

18 MR. CAMPBELL: And I'm Jim Campbell, one of  
19 the attorneys representing Judge Neely.

20 JUDGE NEELY: I'm Judge Neely.

21 CHAIRMAN CONNOLLY: Okay.

22 MR. CONNELLY: Thank you and good morning.  
23 Disciplinary Counsel has urged the Commission to remove  
24 Judge Neely from both of her judicial positions.

25 MS. HEINZ: Will you speak up and a little

1 slower, please.

2 MR. CONNELLY: Sure. Yes. Because she  
3 revealed to a reporter her religious belief that marriage  
4 is the union of one man and one woman and because she  
5 stated that because of that religious belief she would not  
6 be able to solemnize same-sex marriages. But as we've  
7 established in our memorandum on sanctions, no punishment  
8 is appropriate under the unique, factual and legal  
9 circumstances presented here.

10 Firstly, the Commission's own rules do not  
11 expressly command a sanction even upon a finding of  
12 judicial misconduct. And imposing one here would be  
13 especially unjust where Disciplinary Counsel himself has  
14 admitted that the legal issue presented is one that is  
15 unsettled and without legal precedent; where he's admitted  
16 that these are hard questions; and where he's admitted that  
17 Judge Neely's counsel had made good arguments; where Judge  
18 Neely has an unblemished record of 21 years of service as a  
19 municipal judge and 14 years of service as a circuit court  
20 magistrate; where Judge Neely proactively and  
21 conscientiously sought guidance to resolve what she deemed  
22 a potential ethical dilemma but unfortunately was not able  
23 to receive any prior to this proceeding beginning; and  
24 where, again, the United States Supreme Court itself has  
25 deemed the religious beliefs about marriage held by Judge

1 Neely to be decent and honorable and held in good faith by  
2 reasonable and sincere people here and throughout the  
3 world.

4           Given all this, imposing a sanction upon Judge  
5 Neely would unfairly punish her and would also send a  
6 message to people of faith in Wyoming that they -- that  
7 they need not apply to positions of public trust unless  
8 they are willing to sacrifice their religious beliefs.  
9 That would be very unfortunate especially given the special  
10 solicitude that Wyoming's framers made for religious  
11 practice and religious belief.

12           The propriety of a no-sanctions determination is  
13 only strengthened upon Judge Neely's constitutional  
14 defenses and the Rule 8(d)(2) factors the Commission has  
15 already introduced.

16           As for Judge Neely's constitutional defenses,  
17 we've fairly presented those in our briefing, and I won't  
18 belabor them here. I just want to make a few key points.  
19 Both the Wyoming and United States Constitutions forbid  
20 religious tests for office. Here Judge Neely believes that  
21 marriage is the union of one man and one woman.

22           JUDGE WALDRIP: You're talking faster than  
23 we can listen.

24           MR. CONNELLY: I'm sorry, I'm from New  
25 York, Judge. I'll try to -- I'll try and tone it down or

1 at least slow it down.

2 So here Judge Neely believes that marriage is the  
3 union of one man and one woman and that because of that  
4 belief she cannot solemnize same-sex marriages.

5 Disciplinary Counsel maintains that, because of  
6 these religious beliefs, Judge Neely can no longer be a  
7 judge in Wyoming, even a judge in a municipal position that  
8 has no authority to solemnize marriages. This violates the  
9 clear language and purpose of the prohibition on religious  
10 tests for public office contained in both state and federal  
11 Constitutions. Therefore, the Commission should refrain  
12 from imposing any sanction here.

13 With respect to free exercise, both the Wyoming  
14 and United States Constitutions provide robust protection  
15 for it. Imposing a sanction upon Judge Neely would violate  
16 the Wyoming Constitution here, which promises, and I quote,  
17 "Perfect toleration of religious sentiment and the freedom  
18 to exercise the religion of one's choice without  
19 discrimination or preference."

20 Any sanction would also violate the First  
21 Amendment of the United States Constitution, which  
22 prohibits the government from treating religion in a way  
23 that it is not neutral or generally applicable. The  
24 undisputed evidence in the record shows that the Commission  
25 allows other part-time magistrates to decline to solemnize

1 marriages for trivial secular reasons, but they will not  
2 permit Judge Neely to opt out for religious reasons. This  
3 uneven treatment violates her First Amendment right, and  
4 therefore, no sanction should be imposed here.

5 As to the Rule 8(d)(2) factors the Commission is  
6 to consider in determining whether a sanction is  
7 appropriate, Mr. Dixon has gone through those, and I'll do  
8 the same. He's argued that a number of them compel a heavy  
9 sanction in this case. We obviously disagree. In fact, we  
10 would maintain that consideration of each relevant factor,  
11 including those specifically relied upon by Disciplinary  
12 Counsel, actually compels the opposite conclusion, that no  
13 sanction is necessary or appropriate here.

14 So I'll begin with Rule 8(d)(2)(A), but forgive  
15 me, I don't have a PowerPoint. As we spoke to Mr. Orchard,  
16 we just were lucky to make it here on a plane yesterday, so  
17 even if I had it, the PowerPoint may not have gotten here.

18 8(d)(2)(A) looks at the nature, extent and  
19 frequency of the alleged misconduct, as you've already  
20 heard. The alleged misconduct in this case consisted of a  
21 conversation in which Judge Neely revealed a religious  
22 belief about marriage that the Supreme Court itself has  
23 deemed decent and honorable. Judge Neely's inability to  
24 solemnize same-sex marriages is not a violation of the law.  
25 We look at Wyoming Statutes 20-1-106 that gives part-time

1 circuit court magistrates the authority to solemnize  
2 marriages, but it imposes upon them no obligation to do so.

3 So given the isolated and benign nature of Judge  
4 Neely's response to Mr. Donovan, we think that counsels  
5 against a sanction in this case.

6 Next is Rule 8(d)(2)(B), which looks at "the  
7 judge's experience and length of service on the bench."  
8 Again, Mr. Dixon did not dispute this. Judge Neely has an  
9 unblemished record, 35 years of combined service as both a  
10 municipal judge and a part-time circuit court magistrate.  
11 In all that time, not one person has ever complained that  
12 Judge Neely was anything but impartial or failed to follow  
13 the law required.

14 In fact, the record shows quite the opposite.  
15 She's a judge who is exceedingly fair and scrupulously  
16 follows what the law requires. This distinguished record  
17 of judicial service we would contend weighs heavily against  
18 imposing any sanction here.

19 Rule 8(d)(2)(C) asks "Whether the conduct  
20 occurred in the judge's official capacity or private life."  
21 Judges act -- according to the case law we've introduced in  
22 our briefing, and I'll just briefly note here, judges  
23 acting in their official capacity may speak from the bench  
24 or they speak to a litigant or performing judicial duties.  
25 They act in a private capacity when they speak off the

1 bench or are not addressing judicial duties or particular  
2 jury proceedings or litigants.

3 Judge Neely responded to Mr. Donovan regarding  
4 her personal beliefs while at home hanging Christmas  
5 lights. That's undisputed. Therefore, the alleged  
6 misconduct occurred in her private life, and this counsels  
7 against imposing a sanction here.

8 Disciplinary Counsel has argued to the contrary  
9 this morning. He suggests that common sense dictates that  
10 Judge Neely was acting in an official capacity because  
11 Mr. Donovan called her only because she was a circuit court  
12 magistrate. However, even assuming a record had -- record  
13 evidence of that in the record -- we don't have that, but  
14 even assuming that's the case, Mr. Donovan's intention in  
15 calling Judge Neely would not be dispositive. Otherwise  
16 you would have absurd results. For instance, if  
17 Mr. Donovan eavesdropped on Judge Neely when she was at a  
18 diner in town and then reported what he heard in the  
19 newspaper, she'd have to be considered as having acted in  
20 her official capacity in that instance, and that's just not  
21 supported. So the case law determines what private  
22 capacity and official capacity is, and we believe it's  
23 private capacity here, and that -- that militates against a  
24 sanction.

25 Moving on to Rule 8(d)(2)(D), which addresses

1 "the nature and extent to which the acts of alleged  
2 misconduct injured other persons or respect for the  
3 judiciary." Nothing Judge Neely has said or done has  
4 injured anyone we contend. She was never asked to perform  
5 a same-sex marriage and never declined one. The record  
6 confirms that no one has been denied the right to marry or  
7 even inconvenienced in all of Sublette County in the right  
8 to marry, whether opposite sex or same sex.

9 Furthermore, no evidence has suggested that Judge  
10 Neely's undermined respect for the judiciary. The record  
11 evidence reveals actually that members of the LGBT  
12 community in Pinedale proper object to the Commission's  
13 action in this case precisely because they do not believe  
14 Judge Neely's religious beliefs compromise her ability to  
15 remain impartial as she has done in the combined 35 years  
16 of judicial service on the bench.

17 This lack of injury to either persons or the  
18 judiciary militates again against a sanction here.

19 Disciplinary Counsel disagrees. In his briefing  
20 for the third time in this case he references the  
21 hypothetical testimony of Mr. Carl Oleson to bolster his  
22 argument, but the adjudicatory panel has already rejected  
23 that testimony, so it can't be considered here.

24 Additionally, Ms. Ana Cupril's testimony which  
25 was mentioned by Disciplinary Counsel this morning, that's



1 inadequate to establish that Judge Neely somehow diminished  
2 respect for the judiciary. Miss Cupril quite  
3 understandably had read an article. She was not in  
4 possession of all the facts, did not have a knowledge of  
5 the law, and as we previously established in our merits  
6 briefing, she cannot be the standard upon which discipline  
7 can be meted out, otherwise you'd have judges being  
8 punished for conduct that was not in fact misconduct based  
9 on the misperceptions or lack of information held by  
10 people, members of the public. And this is especially the  
11 case again when the Supreme Court has called these beliefs  
12 decent and honorable.

13           Moving on to Rule 8(d)(2)(E), which asks whether  
14 and to what extent the judge exploited her position for  
15 improper purposes. There's no evidence in the record  
16 whatsoever to suggest that Judge Neely exploited her  
17 position as a judge, either as a municipal judge or as a  
18 part-time circuit court magistrate for improper purposes in  
19 this case, so that factor clearly weighs against a  
20 sanction.

21           Disciplinary Counsel's argument that this factor  
22 actually weighs in favor of a sanction is utterly without  
23 support. He suggests that Judge Neely, and I quote,  
24 "deliberately took the opportunity to express her views on  
25 same-sex marriage and thus benefitted from some emotional

1 or psychological gain." There's no evidence in the record  
2 whatsoever for such a claim. In fact, it's pure  
3 speculation.

4 So the Commission should reject that suggestion  
5 that this -- that this factor therefore weighs in favor of  
6 a sanction, and it should reject the idea we can attempt to  
7 invent an improper purpose where none exists.

8 Rule 8(d)(2)(F) asks "Whether the judge has  
9 recognized and acknowledged the wrongful nature of the  
10 conduct and has manifested an effort to change or reform  
11 the conduct." Disciplinary Counsel relies heavily on this  
12 factor of the case for removal, and he's done so again this  
13 morning. His theory seems to essentially boil down to  
14 this: Judge Neely must be punished and punished even more  
15 severely because she has insisted on defending herself in  
16 this matter, but to do so would be unjust and improper for  
17 four independently significant and dispositive reasons.

18 First, this is not a matter where a judge has  
19 committed obviously wrongful conduct like criminal activity  
20 where immediate confession in that case might be  
21 appropriate. This is, rather, according to Disciplinary  
22 Counsel himself, an unsettled legal question, a hard  
23 question, one where Judge Neely's counsel has made good  
24 arguments according to Disciplinary Counsel himself. It's  
25 a novel judicial ethics question that courts are struggling

1 with throughout the country and judges are as well, so this  
2 is not an obvious question.

3 Second, requiring Judge Neely to confess  
4 wrongdoing in order to avoid or reduce her penalty is  
5 fundamentally at odds with her due process right to defend  
6 herself, which is contained directly in the Commission's  
7 rules, Rule 13, for instance.

8 Third, requiring Judge Neely to preemptively  
9 confess wrongdoing where she believes none exists actually  
10 interferes with her ability to remain independent under  
11 Rule 1.2 of the Wyoming Code of Judicial Conduct. Again,  
12 as a judge she doesn't believe that a constitutional  
13 violation or a code violation has occurred here. So to  
14 require her upon pain of -- of being sanctioned to give up  
15 her defense actually interferes with her independence under  
16 Rule 1.2.

17 Fourth and finally, given the one-sided and  
18 unreasonable nature of the only settlement offer that was  
19 presented to Judge Neely at the outset of this case, she  
20 had no choice but to defend herself in this matter. She  
21 should not be punished now for taking the only road that  
22 was available to her.

23 Now, in addressing this factor in his sanctions  
24 memo, Disciplinary Counsel has asserted that Judge Neely  
25 has filed repeated pleadings with the Commission asserting

1 minor technical defenses to the ethical charges. That  
2 claim is not supported. Judge Neely has argued she did not  
3 violate the code because a response to Mr. Donovan  
4 reflects, as the United States Supreme Court has said,  
5 decent and honorable views held in good faith by reasonable  
6 and sincere people. That means these things cannot  
7 constitute prejudice against LGBT citizens. These  
8 arguments like them cannot be deemed minor or technical.

9           Disciplinary Counsel has also argued that Judge  
10 Neely conceded a bias towards same-sex couples. That is  
11 incorrect and is actually the opposite of what Judge Neely  
12 has done. In fact, in the very document that Disciplinary  
13 Counsel cites, her inquiry letter to the Judicial Ethics  
14 Advisory Committee, Judge Neely expressly states, and I  
15 quote, "I have no bias or prejudice concerning the parties  
16 to a same-sex marriage." What she's done, what Judge Neely  
17 has done is indicated a sincere religious belief regarding  
18 marriage. That's very different.

19           Finally, Disciplinary Counsel seeks to dismiss  
20 Judge Neely's constitutional independence as merely  
21 imagined, but in his arguments, both written and oral,  
22 previous to this meeting and in support of the Commission's  
23 motion for summary judgment, Disciplinary Counsel again has  
24 previously admitted that these are hard questions and that  
25 they're unsettled, novel, legal ethics questions with no --

1 no controlling legal authority.

2 So given all this, the Commission should not  
3 transform Judge Neely's exercise of her due process right  
4 to defend herself into a reason of sanction here. It  
5 should thus conclude that under the facts of this case,  
6 this factor actually again militates against a sanction.

7 Looking under Rule 8(d)(2)(G), which asks  
8 "Whether there has been prior disciplinary action  
9 concerning the judge, and if so, its remoteness and  
10 relevance to the present proceeding."

11 Again, Judge Neely has a lengthy record of  
12 sterling judicial service and no disciplinary history  
13 whatsoever to speak of. The A panel itself confirmed this  
14 fact in oral argument stating there's been no evidence that  
15 Judge Neely has done anything except be a well-recognized  
16 and respected judge in the community.

17 Notwithstanding this unblemished record,  
18 Disciplinary Counsel again argues that her practice -- that  
19 Judge Neely's practice of scrutinizing summonses and  
20 warrants, and I quote, "might well have justified the  
21 imposition of sanctions had the practice resulted in a  
22 formal complaint." This is pure conjecture and therefore  
23 should be flatly rejected by the Commission as support for  
24 imposing a sanction. In fact, it's difficult to envision  
25 how carefully scrutinizing a summons and a warrant as a

1 sitting judge would violate the Wyoming Code of Judicial  
2 Conduct, and I would just say it's telling that  
3 Disciplinary Counsel has invoked or even -- not even cited  
4 one rule that presumably Judge Neely would have violated by  
5 performing her duties.

6 Getting close to the end here. Moving on to Rule  
7 8(d)(2)(H). This factor asks "Whether the judge complied  
8 with prior discipline or requested and complied with a  
9 formal ethics advisory opinion."

10 Again, not to sound like a broken record, but  
11 Judge Neely has no disciplinary history whatsoever to speak  
12 of. If anything, her resume reflects an abiding concern  
13 with improving the judiciary and complying with ethical  
14 standards. For instance, she volunteered to serve on the  
15 steering committee for the Sublette County Drug Treatment  
16 Court and on the select committee to revise the Wyoming  
17 Code of Judicial Conduct. In this matter, as we have  
18 previously stated, she proactively sought guidance from the  
19 Judicial Ethics Advisory Committee. Mr. Dixon has stated  
20 that -- that that request was tardy, but if the Commission  
21 looks at the actual record of facts, it would see that  
22 that's the second time that Judge Neely sought guidance.

23 Again, in late October, very close to Guzzo v.  
24 Mead coming out, she goes to Judge Haws, and the nub of the  
25 problem here is that Judge Haws, and this is record

1 evidence, realizes -- he's on record as saying I received  
2 no guidance from any judicial body that has the authority  
3 to put it out in Wyoming. So I said -- so Judge Haws said,  
4 "We don't have any guidance. Let's see if some comes out."

5 Now, at that point she's called and asked a  
6 specific question, "Are you excited to perform same-sex  
7 marriages?" At that point close in time to after that --  
8 and obviously it was a holiday in there, but close in time  
9 after that she -- she has an -- she writes up an assiduous  
10 letter asking guidance from the one body that's designed to  
11 give guidance in the state.

12 I do want to -- to discuss Mr. Dixon's three  
13 calls -- three conversations with Mr. Donovan on the day in  
14 question because Mr. Donovan -- Mr. -- Mr. -- Disciplinary  
15 Counsel has made a lot of these three calls. I think it  
16 would pay just for me to quickly, briefly go over what  
17 occurred on these three calls.

18 I think everybody knows what happened on that  
19 first call. Judge Neely receives a call. It's an unknown  
20 number. She calls it back. Mr. Donovan identifies himself  
21 and says almost immediately, "Are you excited to perform  
22 same-sex marriages?" Judge Neely gives an honest answer,  
23 not recalling Judge -- Judge Haws' advice.

24 The second call Judge Neely realizes soon  
25 thereafter that she believes that Mr. Donovan already knew

1 about her religious beliefs and was attempting to start up  
2 trouble. So she calls him back and requests that he --  
3 that he tran -- that he quote -- that he take a quote that  
4 gives a more general description of her discussion rather  
5 than the conversation -- one of the conversations she had  
6 with him. He says, "I will get back to you."

7 The third conversation is actually Mr. Donovan  
8 calling Judge Neely back and saying -- and not giving her  
9 an answer as to whether she can substitute a shorter  
10 generic description of their conversation, but telling her  
11 that she can -- he will -- he will not print her statements  
12 if she will only agree to violate her conscience and  
13 perform same-sex marriages.

14 Now, that can hardly be used as evidence to  
15 sanction Judge Neely especially when she said "no comment"  
16 six times, and that's in the record. But that essentially  
17 is a quid pro quo from Mr. Donovan where he steps outside  
18 of his role as a reporter. So it can hardly be maintained  
19 that third phone call or any of these phone calls had  
20 anything to do with anything except there were three  
21 conversations that day.

22 The final factor is Rule 8(d)(2)(I), which looks  
23 at "Whether the judge cooperated fully and honestly with  
24 the Commission in the proceeding." Now, we would contend  
25 that Judge Neely, and the evidence -- the record evidence



1 is clear on this, has cooperated fully and honestly with  
2 the Commission in this proceeding. She's followed all  
3 Commission rules, complied with all applicable deadlines,  
4 sat through the Commission's noticed deposition and  
5 comported herself professionally throughout this  
6 proceeding.

7           Disciplinary Counsel disagrees, and he's made his  
8 disagreement plain here this morning. His argument  
9 apparently assumes that cooperation with the Commission  
10 means Judge Neely is required to forego her right to defend  
11 herself, but this cannot be right. Disciplinary Counsel  
12 himself has conceded in his memo and again this morning  
13 that Judge Neely possesses the right to defend herself, and  
14 Commission Rule 13 that I mentioned before provides  
15 specifically that the judge shall have the right and  
16 reasonable opportunity to defend against the allegations  
17 made against her. Exercising this right to defend herself  
18 does not mean that Judge Neely has failed to cooperate with  
19 the Commission.

20           Moving to one of the -- probably the most serious  
21 matter, Disciplinary Counsel has suggested that Judge Neely  
22 has been dishonest with the Commission. Specifically he  
23 implies that Judge Neely's testimony at her September 2015  
24 deposition shows that she was dishonest in her February  
25 2015 letter responding to the Commission's initial inquiry.

1 This argument is entirely unfounded.

2 In January 2015 the Commission sent Judge Neely  
3 an inquiry letter, as many of you probably know, asking the  
4 specific question, I'll quote it directly, whether Judge  
5 Neely was aware her comments will be published in Sublette  
6 Examiner. Judge Neely answered that question honestly,  
7 directly and completely in her February response letter.

8 Then many months later in September 2015  
9 Disciplinary Counsel asked Judge Neely a series of  
10 different questions at her deposition regarding her precise  
11 interactions with Mr. Donovan on the day in question and  
12 what she was doing the day she spoke to him. Judge Neely  
13 answered those questions honestly, directly and completely.

14 There's no discrepancy with what -- between what  
15 Judge Neely said in her February inquiry response letter  
16 and what she said in her deposition in September. The more  
17 detailed questions posed by Judge -- by Disciplinary  
18 Counsel disclose additional information, but nothing Judge  
19 Neely said at her deposition contradicts or is even  
20 inconsistent with what she wrote in her letter. There's  
21 simply nothing to support Disciplinary Counsel's charge of  
22 dishonesty here.

23 Finally, I'd like to say a few words on monetary  
24 sanctions as Disciplinary Counsel has already briefed those  
25 as well. As we -- as we've briefed in our memorandum on

1 sanctions, it's our contention that assessing fees and  
2 costs against Judge Neely here would be improper, unjust  
3 for a number of legal and equitable reasons. First,  
4 nothing in the Commission's rules themselves require an  
5 award of fees and costs.

6 Second, the Wyoming Supreme Court has held that  
7 due process requires a party to give formal notice of its  
8 intention to seek fees and costs. That is because a person  
9 must know what is at stake in deciding how to go about  
10 defending themselves.

11 As the Wyoming Supreme Court recently said in the  
12 Stinson case 2014, and I quote, "Fundamental fairness  
13 demands that sufficient notice of charges and consequences  
14 must be provided to enable the respondent to make  
15 meaningful choices with respect to the need for and the  
16 manner of his defense without being subjected to any  
17 element of surprise."

18 Proper notice was not given here. Disciplinary  
19 Counsel did not include in the notice of commencement of  
20 formal proceedings an intention to seek fees and costs on  
21 behalf of the Commission. Therefore, none should be  
22 awarded.

23 Additionally, and finally, equitable  
24 considerations also strongly weigh against any imposition  
25 of fees and costs here. This case presents novel, legal

1 ethics questions invoking important constitutional rights  
2 as we've mentioned a number of times for which even  
3 Disciplinary Counsel has admitted there existed no legal  
4 precedent. It would be unfair to saddle Judge Neely with  
5 costs for exercising her due process rights to defend  
6 herself against charges that are not supported by any  
7 governing judicial precedent. Assessing fees and costs  
8 would be especially egregious where Judge Neely proactively  
9 sought guidance from the Judicial Ethics Advisory Committee  
10 and was rebuffed because of the pendency of these  
11 proceedings themselves.

12           Disciplinary Counsel has contended that his  
13 failure to include an intent to seek fees and costs is of  
14 no account. We believe he's incorrect here. Disciplinary  
15 Counsel has argued that Commission's rules do not require  
16 notice, but notice is a legal requirement that exists quite  
17 independent of the Commission's rules. We know this  
18 because the disciplinary code for the Wyoming State Bar,  
19 which was operative in the Stinson case, also did not  
20 expressly require notice. And yet Stinson -- in Stinson  
21 the Wyoming Supreme Court obviously said that due process  
22 requires notice up front so that a respondent can know what  
23 is at stake in mounting a defense from the outset.

24           Disciplinary Counsel has also argued in this vein  
25 that the Court in Stinson did not require notice be in the

1 complaint but said that any notice was sufficient. But  
2 that reading of Stinson conflicts with the very purpose of  
3 giving notice in the first place. Again, if notice at any  
4 time is sufficient, then fundamental fairness would not be  
5 in play, but you need -- fundamental fairness comes into  
6 play because you need to know from the outset what is at  
7 stake in defending yourself. That did not happen here.  
8 The only way a judge like Judge Neely can make a meaningful  
9 choice about the manner of her defense is if she has notice  
10 to seek fees in the first instance.

11 This also explains why sufficient notice of an  
12 intent to seek fees and costs cannot be found in  
13 Disciplinary Counsel's deposition questioning six months  
14 later, weeks away from the close of discovery. By that  
15 point Judge Neely had already long charted her course of --  
16 her defense course in this matter.

17 All this means that an award of costs and fees in  
18 this matter would be improper, but even if the -- even if  
19 the Commission disagrees with this conclusion, we reiterate  
20 our request that we made in the memorandum on sanctions  
21 that the Commission permit Judge Neely the opportunity to  
22 review and carefully respond to the reasonableness of the  
23 specific fees and costs that counsel has submitted in this  
24 case. This is particularly important here because  
25 Disciplinary Counsel has interjected additional claims

1 throughout this proceeding against Judge Neely midway  
2 through the proceeding and then withdrew them once we  
3 demonstrated they violated Judge Neely's constitutional  
4 right to a defense and to the counsel of her choice. So no  
5 work associated in any way with those admittedly  
6 unconstitutional claims can be permitted.

7 In conclusion, under unique circumstances  
8 presented here, I will just say that equitable  
9 considerations, constitutional imperatives and the Rule  
10 8(d)(2) factors we discussed all counsel against imposing  
11 any sanction on Judge Neely. Thank you.

12 CHAIRMAN CONNOLLY: Thank you,  
13 Mr. Connelly.

14 Pat, you still have ten minutes to use if --

15 MR. DIXON: I'll try not to use them all.  
16 Relative to the award of fees and costs, I'm not -- I am  
17 not specifically asking you to make an award of fees and  
18 costs.

19 What the rules authorize you to do is to award or  
20 make monetary sanctions. It doesn't have to be fees and  
21 costs. It can be fees and costs. And I think that reading  
22 the rules, the implication is that the fees and costs that  
23 the taxpayers have advanced in fighting this holy war is a  
24 good measure of what the monetary sanction ought to be.

25 I'm very comfortable with my reading of Stinson

1 and -- and the preceding case, the Norman case, on which  
2 the Supreme Court relied in deciding Stinson. There is no  
3 affirmative requirement that that be pled in the complaint.  
4 There is no requirement of, as Mr. Connelly says, formal  
5 notice. The requirement, the due process requirement is  
6 sufficient notice.

7 Now, Judge Neely, like everybody else in the  
8 world, is charged with knowledge of the law, including the  
9 rules of this Commission, and the rules of this Commission  
10 say in four different places that she can be subject to  
11 monetary sanctions, and they talk about fees and costs in  
12 that context.

13 So I say to you, having done -- done the  
14 research, I'm comfortable the Supreme Court is not going to  
15 have a problem with you awarding her monetary sanctions in  
16 whatever amount you feel is appropriate.

17 I quibble with the word "dishonest." I have not  
18 accused her of being dishonest. I have accused her of  
19 lacking candor to this Commission. When she gave her  
20 initial response, she was not forthcoming about how this  
21 business with Ned Donovan came down. She led you to  
22 believe that, well, there was some distraction, a death in  
23 the family, who knows what, that caused her to be off her  
24 moorings on that day. In fact, this transpired over a  
25 three-hour period in three conversations with this reporter

1 in which she had the opportunity to recant those statements  
2 and stubbornly said she would not.

3 And remember, she had talked to Judge Haws early  
4 on in this deal, and Judge Haws told her -- this is her  
5 supervising judge -- told her keep your head down and your  
6 mouth shut. Say no comment. Don't talk about this. And  
7 what did she do the first opportunity she's given, she goes  
8 to a reporter and makes these statements.

9 They keep going back to the fact that we made  
10 this at the direction of the I Panel this offer to allow  
11 her to resign her position. Let me respond to that by  
12 saying not once since this matter commenced in late  
13 December of 2014 has Judge Neely ever made an offer to this  
14 Commission to resolve this short of bloody litigation.

15 Counsel tries to quote me as saying these are  
16 hard issues and unsettled legal questions. If there have  
17 been any hard issues, what I meant by that is when you  
18 start parsing through the constitutional issues and  
19 deciding whether you're going to apply strict scrutiny to a  
20 question, those are hard -- those are head-scratching  
21 issues. This is not a hard issue. Not one commission has  
22 had a problem deciding this is an ethical violation. A  
23 Panel had no problem resolving this. It isn't a hard  
24 issue.

25 On this question of whether she's caused any



1 harm, she filed two affidavits from gay couples in  
2 Pinedale, friends of hers, and I don't know how -- some of  
3 you I know have been very deeply into this file. Probably  
4 most of you have not. If you read those affidavits,  
5 there's one affidavit in particular where the woman says:  
6 We know Judge Neely's position on this question. We wanted  
7 to get married, but we didn't go to her because we didn't  
8 want to offend her sensibilities.

9 And you know, I submit to you that the judge  
10 should never put a person in that position. That's the  
11 crux of this. That's the crux of this is she's adopted a  
12 position that radiates bias and prejudice against 10  
13 percent of our country's population, and people in the  
14 community knew that, and they tiptoed around her, and that  
15 shouldn't happen. She should be accessible to every  
16 citizen in that county.

17 He talks about her unblemished record and states  
18 that no one has ever complained about Judge Neely. That's  
19 not true. According to Judge Haws, the police officers up  
20 there complain about her all the time rejecting their  
21 tickets and their warrants or rewriting them. And you  
22 judges in the group, you know very well that if you did  
23 that, that if you took it on yourself to rewrite a  
24 prosecutor's complaint or a plaintiff's complaint or a  
25 defendant's answer, you'd be subject to discipline. Had

1 these police officers brought those complaints to this  
2 Commission, some type of discipline would have been  
3 warranted, and if you read Cindy Gray's material, you see  
4 this happens on a monthly basis across the -- across the  
5 country.

6 Counsel says I'm asking you to sanction her  
7 because of her religious beliefs and she can't be adjudged  
8 because of her religious beliefs. I don't care what her  
9 religion is. The point of it is, the point of this thing  
10 is she was asked by her supervising judge not to comment  
11 publicly. She disregarded those instructions. She made  
12 comments. The nature of those comments imply that she's  
13 not going to enforce the law equally and that she has a  
14 discriminatory animus toward a large segment of this  
15 population. That's what this is about.

16 If she'd have made those comments about enforcing  
17 marijuana laws or some other kind of -- we'd be -- we'd be  
18 in the same position, and I'd ask that she be removed from  
19 office.

20 I'm going to -- I'm going to conclude by quoting  
21 Judge Neely. It's in my memorandum. You probably read it.  
22 But these are her words. These are the words that she  
23 wrote to the Judicial Advisory Commission. "Without  
24 getting in too deeply here, homosexuality is a named sin in  
25 the Bible, as are drunkenness, thievery, lying and the

1 like." She has essentially equated homosexuality to  
2 drunks, liars and thieves, and I submit to you that  
3 somebody with that attitude really should not be on the  
4 bench. Thank you.

5 CHAIRMAN CONNOLLY: Thank you.

6 Mr. Connelly, five minutes.

7 MR. CONNELLY: Thank you. Just quickly in  
8 rebuttal. I want to address again that third call that  
9 Mr. -- Disciplinary Counsel again referred to. I don't  
10 want the Commission to be misled that Mr. Donovan called  
11 Judge Neely and said something like, "Hey, I know I caught  
12 you by surprise, do you want to retract your statements?"  
13 What Mr. Donovan said was, essentially, if you will agree  
14 on this phone to marry same-sex couples and violate your  
15 religious beliefs and trample upon your own conscience, I  
16 won't publish anything.

17 Now, to say that that is Judge Neely deliberately  
18 and stubbornly refusing to take back her comments, the  
19 facts don't support that. I think the Commission realizes  
20 that.

21 Second point, the idea that she made a deliberate  
22 public statement the first opportunity she got. Judge  
23 Neely, again, there's no -- there's no dispute in the  
24 record that she's at home hanging Christmas lights. I  
25 don't hang Christmas lights anymore because I did it for a

1 couple years. Anybody who's ever tried to hang Christmas  
2 lights they put away the previous winter knows you're  
3 better off just throwing them out and hiring somebody to do  
4 it, okay. So she was really distracted.

5 And the first question she gets is "Are you  
6 excited to do same-sex marriages?" Now, that is not -- she  
7 doesn't deliberately ignore Judge Haws' advice from a month  
8 and a half previously. She in her testimony said, "I  
9 failed to recall his advice at that moment." And I think  
10 the Commission, if it looks at this sincerely, will know,  
11 this is not the way that somebody makes a deliberate public  
12 statement and comes out in the public. So I think -- I  
13 think the facts show that this is a failure to recall, not  
14 a deliberate public statement.

15 The third point, with respect to her comment that  
16 Mr. Dixon closed with, that was in her letter to the  
17 Judicial Ethics Advisory Committee, and Disciplinary  
18 Counsel did not quote the last part of that statement where  
19 Judge Neely says, does that -- after discussing her  
20 religious beliefs and her religious beliefs regarding  
21 same-sex marriage, she says, "Does that mean I cannot be  
22 impartial on the bench when a homosexual or habitual liar  
23 comes before me with a speeding ticket or the alcoholic  
24 appears before me for yet another charge of public  
25 intoxication? No. Firmly, no."

1           So, again, she's not -- she's never expressed a  
2 bias against LGBT citizens. What she has expressed is a  
3 sincere religious belief regarding marriage, and that again  
4 militates against the imposition of sanctions. That's the  
5 lens through which the Commission should look at this case.  
6 Thank you.

7           CHAIRMAN CONNOLLY: Thank you, gentlemen.  
8 So at this time we're going to go into executive session  
9 and see if any members have any questions for either side.  
10 Does someone -- do you want to --

11           MS. SOTO: Yes, we'll turn the recording --

12           CHAIRMAN CONNOLLY: Turn that off.

13           MS. SOTO: Yeah.

14           (Discussion off the record during  
15 executive session.)

16           CHAIRMAN CONNOLLY: Okay. We're back on  
17 the record in the matter of 2014-27. We are just coming  
18 out of executive session. The Commission posed a question  
19 to Judge Neely, and we are here for that response. The  
20 question being will Judge Neely publicly apologize and  
21 agree that she as a judge must follow the law even where  
22 she may disagree with that law, and if so, will she agree  
23 to perform same-sex marriages under reasonable  
24 circumstances as dictated by her ordinary discretion.

25           So we're here for the response of that.

1 MR. CAMPBELL: So in response to the first  
2 question, will Judge Neely publicly apologize and agree  
3 that she as a judge must follow the law even where she may  
4 disagree with that law, Judge Neely has no problem saying  
5 that she will agree to follow the law. She believes that  
6 she has followed the law, but the law does not -- so  
7 beginning with her magistrate -- I'm sorry, her municipal  
8 judge position, the law does not even authorize her to  
9 perform marriages. So she's done nothing indicating that  
10 she refuses to follow the law in her position as a  
11 municipal judge.

12 And even in her role as a part-time circuit court  
13 magistrate, there's no legal obligation to perform  
14 marriages. Statute says that a magistrate is authorized to  
15 perform marriages, not that they're required to.

16 So it's Judge Neely's position that she does not  
17 refuse to follow the law as a magistrate.

18 One thing that's also important that hasn't been  
19 mentioned this morning is that Judge Neely made it very  
20 clear in her affidavit that she has no problem recognizing  
21 same-sex marriages when she's performing her duties on the  
22 bench as a judge. So if a case were to come before her,  
23 she says this in her affidavit in this case, that would  
24 ever require her to recognize or afford rights based on a  
25 same-sex marriage in an adjudicative proceeding, so, for

1 example, if somebody claimed a spousal privilege based on a  
2 same-sex marriage, something like that, she states here  
3 that she would unquestionably recognize that marriage and  
4 inform the litigants all of the rights that flow from it.

5 So it's Judge Neely's position that she has no  
6 problem following the law and that she is following the law  
7 and that the law gives her discretion in this regard.

8 And then to the second question, would she agree  
9 to perform same-sex marriages under reasonable  
10 circumstances as dictated by her ordinary discretion, Judge  
11 Neely cannot agree to perform same-sex marriages because  
12 that would violate her religious convictions, and that is  
13 consistent with the discretion that the law gives her when  
14 it comes to solemnizing marriages.

15 CHAIRMAN CONNOLLY: Okay. Thank you.  
16 Short -- we'll go back into executive session now and . . .

17 (Discussion off the record during  
18 executive session.)

19 MS. SOTO: Okay. You're on the record.

20 CHAIRMAN CONNOLLY: Okay. We're back on  
21 the record. So first off -- okay. So now the Commission  
22 recommends removal of Judge Neely from her position as  
23 municipal court judge and circuit court magistrate, so  
24 we'll have a vote. All those in favor.

25 (Ayes heard.)

1 CHAIRMAN CONNOLLY: All those --

2 (Aye heard from Member Hayes on  
3 telephone.)

4 CHAIRMAN CONNOLLY: -- opposed. Okay. So  
5 unanimous on that issue.

6 The next issue is sanctions or costs and fees.  
7 Commission leaves open the question to be decided by the  
8 Wyoming Supreme Court as to administrative costs and/or  
9 fees, if any. All those in favor.

10 (Ayes heard.)

11 (Aye heard from Member Hayes on  
12 telephone.)

13 CHAIRMAN CONNOLLY: All those opposed.  
14 Okay. That also passes unanimously, so we are adjourned on  
15 this matter.

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## C E R T I F I C A T E

I, LORI ARNOLD, a Registered Merit Reporter, do hereby certify that the foregoing is a correct transcript from the official recording of the proceedings in the above-entitled matter.

Dated this 26th day of February, 2016.

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LORI ARNOLD  
Registered Merit Reporter