

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
AT NEW ALBANY  
*filed electronically*

LINDA G. SUMMERS,	)	
Plaintiff	)	
	)	
v.	)	CASE NO. 4:15-cv-93-RLY-DML
	)	
SALLY WHITIS in her official capacity as	)	
HARRISON COUNTY CLERK,	)	
and	)	
HARRISON COUNTY, a political	)	
subdivision of the State of Indiana	)	
Defendants	)	

**BRIEF IN SUPPORT OF PLAINTIFF'S**  
**MOTION FOR SUMMARY JUDGMENT ON LIABILITY**

Comes the Plaintiff, Linda G. Summers, by counsel, and, in support of her Motion for Summary Judgment on Liability pursuant to Rule 56 of the Federal Rules of Civil Procedure hereby states as follows:

**I. STATEMENT OF MATERIAL FACTS NOT IN DISPUTE**

Linda G. Summers ("Summers") was first employed to work for the Defendants at the Harrison County Superior Court Clerk's Office in Corydon, Indiana, on or about June 30, 2008. She was hired by Sally Whitis, the elected Clerk of Harrison County. Summers is a Christian believer and adherent of the Christian faith. She worships and regularly attends religious services at First Capital Christian Church, Corydon, Indiana.

Linda Summers has a sincerely held religious belief, based upon the tenants of her faith and biblical teaching, such as Leviticus 18:22; Romans 1:26-27, I Cor. 6:9-10; and I

Tim 1:9-10, that it is a sin for persons of the same sex to engage in sexual relations and, based upon Genesis 2:18-25, and other biblical authority, that persons of the same sex cannot and should not be morally or legally recognized as husband and wife, and that God will judge individual Christians, as well as the society of which they are a part, who condone or institute same sex marriages.

On or about October 22, 2014, Defendant Whitis circulated an email communication to all employees concerning a published decision of the Indiana Supreme Court to recognize marriages between same sex couples and that, "Therefore it is our duty in the Clerk's Office to process those applications." Whitis further stated that, "Even though it may be against your personal beliefs, we are required by state law to process their applications. We are only doing the paperwork and not performing their ceremony." A true copy of said email communication is attached hereto and incorporated by this reference herein as Exhibit A.

On December 8, 2014, a same sex couple came to the Harrison County Clerk's Office ("HCCO") to apply for a marriage license which Plaintiff Linda Summers was called upon to process. She informed Sally Whitis that she felt that she could not prepare the appropriate paperwork for a marriage license for the same sex couple because of her religious beliefs against same sex marriages. Later that day, Plaintiff wrote, and hand-delivered the following morning, a letter to Defendant Whitis styled "Religious Accommodation Request," in which she informed Whitis that she has "a sincerely held religious belief against same sex marriages" and that she felt that being required to process marriage licenses for such couples violated her religious beliefs based upon

Biblical teaching. She further requested that Whitis accommodate her sincerely-held religious belief by not requiring her to process such applications for marriage licenses and that there were at least two other employees of the HCCO who had offered to do so when such applications were received. A true copy of said letter dated December 9, 2014 is attached hereto and incorporated by this reference herein as Exhibit B.

On December 9, 2014, immediately after the receipt of Summers' "Religious Accommodation Request," Whitis terminated Summers' employment with the HCCO because of her refusal to process application(s) for marriage licenses by same sex couples, which Defendant described, in a Memorandum hand-delivered to Summers, as insubordination, purportedly in accordance with Harrison County personnel policy, which provides that "refusing to perform assigned work or to comply with written or verbal instructions of supervisors," will subject "the individual involved to disciplinary action, up to and including termination." A true copy of said Memorandum from Whitis to Summers dated December 9, 2014, is attached hereto and incorporated by this reference herein as Exhibit C.

The foregoing discharge occurred without any attempt by Whitis or Harrison County to accommodate Summers and her religious beliefs, despite the fact that she made her sincerely-held beliefs known to Defendant Whitis; requested a reasonable accommodation; and that Section 1.4 of the Harrison County Personnel Policies Handbook provides, in relevant part that, "It is the policy of the County of Harrison to provide equal employment opportunity in employment to all employees . . . and **to prohibit discrimination in employment because of race, religion, color, sex, age, national**

origin, disability, military status, or any other classification under applicable law.” (emphasis supplied). A true copy of the referenced section of the Harrison County Personnel Policies Handbook is attached hereto and incorporated herein by this reference as Exhibit D.

Linda Summer, at all times relevant herein, was an “employee” of the Defendant as that term is defined in (12 U.S.C. § 2000e(f).] Defendants Whitis and Harrison County at all times relevant herein were the “employer,” or agent of the “employer,” which employed Summers as that term is defined in 42 U.S.C. § 2000e(b).

Ms Summers has testified at length about the Biblical basis for her sincerely held religious belief that homosexuality is against God’s law, based upon scriptural teaching, explaining that while she isn’t “passing judgement on homosexuals in no way or form,” she believes “it’s not God’s law to have them marry and because of that she could not process same sex marriage licenses.” Depo., Summers, 1-27-16, pp. 127-28, 131-33 (attached for reference at Exhibit E).

Harrison County Clerk Sally Whitis admits that Summers was fired because of her refusal to process same sex marriage licenses and that, prior to her termination on December 9, 2014, Whitis had been informed and understood that Linda’s refusal to process a same sex marriage license application was based upon her sincerely held religious belief that it was wrong for her to do so., Depo. Whitis, 2-18-16, pp. 33-34 (attached for reference at Exhibit F).

Whitis further admitted she was aware that the Harrison County Personnel Policies Handbook prohibits discrimination in employment because of religion, that she

received a written request from Summers for an accommodation of her religious belief and that while it would have been possible to make an accommodation, she made no effort to do so. Depo. Whitis, 2-18-16, pp. 39-41 (attached for reference at Exhibit F). She further explained that the average number of marriage license applications (both heterosexual and homosexual) at the branch office where Summers worked was approximately two (2) per month and that there were nine (9) other women employed by the Superior and Circuit Clerks' offices who could have processed same sex marriage licenses instead of Summers. Depo. Whitis, 2-18-16, pp. 41-42, 49 (attached for reference as Exhibit F).

## II. ARGUMENT

### A. Standard for Granting Summary Judgment.

Summary judgment is appropriate where the moving party establishes that there "is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In order to withstand Plaintiff's Motion for Summary Judgment, the Defendants must come forward with sufficient evidence to establish that they could withstand a directed verdict motion at trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986); *Weeks v. Samsung Heavy Industries Co., Ltd.*, 126 F.3d 926, 933 (7<sup>th</sup> Cir. 1997); *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1478 (6th Cir. 1989).

However, "the Respondent cannot rely on the hope that the trier of fact will disbelieve the Movant's denial of a disputed fact, but must 'present affirmative evidence' in order to defeat a properly supported motion for summary judgment." *Id.* at 1479 (citation omitted). A genuine issue of material fact only exists then "the evidence is such

that a reasonable jury could return a verdict for the non-moving party." *Anderson, supra*, at 248. The non-moving party must proffer affirmative evidence to support their allegations and cannot succeed by merely hoping the Court will disbelieve the movant's evidence, or by relying on subjective evidence. *Barnhart v. Pickrell*, 12 F.3d 1382 (6th Cir. 1993).

Because employment cases often turn on questions of intent and credibility, courts weighing summary judgment motions in such cases must be careful not to invade the province of the jury by attempting to resolve swearing contests etc. However, employment cases are governed by the same rules that govern other summary judgment cases, and they are equally amenable to summary disposition so long as there is no genuine dispute as to the material facts. See *Giannopoulos v. Brach & Brock Confections, Inc.*, 109 F.3d 406, 410 (7<sup>th</sup> Cir. 1997)(citations omitted); see also *Wallace v. SMC Pneumatics, Inc.*, 103 F.3d 1394 (7<sup>th</sup> Cir. 1997); *Weeks supra*, at 933-934.

**B. Summers has established a prima facie case of employment discrimination in violation of Title VII of the Civil Rights Act**

Based upon the above-referenced facts, which Summers submits are either undisputed or admitted, via deposition testimony, the applicable law governing Title VII religious discrimination seems to clearly support a summary judgment for Summers. The elements of a prima facie case of employment discrimination under Title VII have been established in the above referenced depositions. Linda Summers has established, and Harrison County does not appear to dispute, that: 1) she had a bona fide religious belief, the practice of which conflicted with an employment duty; 2) she informed her employer of the belief and conflict; and 3) Whitis, on behalf of Harrison County, discharged her

because of her inability to fulfill the job requirement. *See EEOC v. United Parcel Service*, 94 F.3d 314 (7<sup>th</sup> Cir. 1996); *Turpen v. Missouri-Kansas-Texas R.R. Co.*, 736 F.2d 1022, 1026 (5<sup>th</sup> Cir. 1984).

Once the employee has established a prima facie case, the burden shifts to the employer to prove that it cannot reasonably accommodate the employee without incurring undue hardship. *See Wright v. Runyon*, 2 F.3d 214, 216 (7<sup>th</sup> Cir. 1993); also *Anderson v. General Dynamics Convair Aerospace Div.*, 589 F.2d 397, 401 (9<sup>th</sup> Cir. 1978), *cert. denied*, 442 U.S. 921 (1979). In this case, as shown in the above-referenced deposition testimony, Summers established a prima facie case under the above standard. Sally Whitis, on behalf of the employer, admitted that there was no doubt in her mind that Summers' reason for not processing the same sex marriage license in question was because of her religious belief and that it would have been possible to make an accommodation for Linda Summers. However, Whitis decided that she would not do so and fired Summers anyway. See Depo. Whitis, p. 42 (Exhibit F). Such entire lack of effort to accommodate an employee's religious based conflict with an employment duty has been roundly condemned in this and other U.S. Circuit Courts of Appeals. *See Redmond v. GAF Corp.*, 574 F.2d 897 (7<sup>th</sup> Cir. 1978); *EEOC v. Universal Mfg. Corp.*, 914 F.2d 71, 73 (5<sup>th</sup> Cir. 1990); *Smith v. Pyro Mining Co.*, 827 F.2d 1081, 1085 (6<sup>th</sup> Cir. 1987).

**C. Defendants fired Summers in violation of the Civil Rights Act due to her sincerely held religious beliefs and failed to reasonably accommodate her religious beliefs even though such an accommodation could have been made without undue hardship**

Based upon Whitis' deposition testimony, the record is equally clear that she cannot prove that an accommodation of Summers' religious belief, by asking same sex

marriage license applications be handled by other clerks, would have resulted in undue hardship. See *Haring v. Blumenthal*, 471 F. Supp. 1172, 1182 (D.D.C. 1979); also *American Postal Workers Union v. Postmaster General*, 781 F.2d 772, 776 (9<sup>th</sup> Cir. 1986). Whitis concedes that only about **two (2)** marriage applications **per month** are processed at the Superior Court location where Summers worked, by **both heterosexual and homosexual applicants**, and between the two locations of the Harrison County Clerk's Offices there were at least **nine (9) other clerks who could have processed same sex marriage applications, if any.** (emphasis supplied) But the record is equally uncontroverted that Whitis never made any affirmative effort to investigate such an accommodation. Depo. Whitis, pp. 41-42, Exhibit F.

In a Title VII religious discrimination case it is incumbent on the employer to show that it has taken "some initial steps to reach a reasonable accommodation of the particular religious belief at issue." *American Postal Workers Union, supra*, at 776. "Undue hardship cannot be supported by merely conceivable or hypothetical hardships. . . The magnitude as well as the fact of hardship must be determined by "actual imposition on co-workers or disruption of the work routine." *Tooley v. Martin-Marietta Corp.*, 648 F.2d 1239, 1243 (9<sup>th</sup> Cir. 1981); *Anderson v. Gen. Dynamics*, supra at p. 402. It is also not reasonable in a case such as this one for an employer to require the employee to seek her own replacement by arranging for another employee to act as a substitute. See *EEOC v. IBM, Inc.*, 824 F. Supp. 147 (USDC, C.D. IL (1993) citing *Smith v. Pyro Mining Co.*, 827 F.2d 1081, 1085 (6<sup>th</sup> Cir. 1987).

If the employer does not propose an accommodation, it must accept the

employee's proposal or demonstrate that the proposal would cause undue hardship. *See EEOC v. Ilona of Hungary, Inc.*, 108 F.3d 1569 (7<sup>th</sup> Cir. 1996); also *EEOC v. Townley Engineering & Mfg. Co.*, 859 F.2d 610, 615 (9<sup>th</sup> Cir. 1988). Moreover, even if Whitis had attempted to do so, the above-referenced facts clearly establish that due to the small number of same sex marriage applications there would not have been a "significant discriminatory impact" on co-workers. *See Opuku-Boateng v. State of California*, 95 F.3d 1461, 1468 (9<sup>th</sup> Cir. 1996).

**D. Title VII has never been construed to exempt public employers from a duty to accommodate sincerely held religious beliefs under Title VII.**

The Constitution does not mandate that individuals surrender their constitutional rights, including sincerely held religious beliefs, as a condition of public sector employment. *See Perry v. Sindermann*, 408 U.S. 593, 597 (1972). Moreover, despite Defendants' assertions to the contrary, a government employer can be required to accommodate a religious employee's request to be relieved from processing transactions which violate the employee's sincerely held religious beliefs, such as applications for tax exempt status submitted by any organization which violated the Ten Commandments or God's natural law. *See Haring v. Blumenthal, supra*, 471 F. Supp. at 1175. The court also ruled that accommodating the employee would not result in undue hardship to the employer because the number of applications the employee might refuse to handle would be relatively insignificant as compared with his total workload. *Id.* at 1182. See also *Am. Postal Workers Union v. Postmaster Gen., supra*, at 776 (finding accommodation required for postal clerks with religious objections to processing military draft notices).

Equally unpersuasive is any claim by the county that recent changes to state or

federal law as interpreted by the courts would not permit an accommodation of Summers' sincerely held religious belief. This issue was recently considered in a similar case in Oregon involving similar claims by a former employee of a county clerk's office there. Considering such an argument, the Court determined that, "A public sector employer does not unconstitutionally "support" an employee's religious beliefs by granting an accommodation to that employee. In other words, public employers are not exempt from accommodating the constitutional rights, including sincerely held religious beliefs, of their employees under Title VII. "Thus the State does not stumble over the First Amendment if it accommodates a Seventh Day Adventist by not scheduling him to work between Friday and sundown Sunday." (citations omitted) *Slater v. Douglas County*, 743 F. Supp.2d 1188 (2010), or, as in this case, excusing Summers from being required to process same sex marriage licenses.

It is also significant to note that no controlling court has ruled that "sex" means "sexual orientation" or "gender identity" for purposes of Title VII. See *Vickers v. Fairfield Med. Ctr.*, 453 F.3d 757, 762 (6<sup>th</sup> Cir. 2006) ("... sexual orientation is not a prohibited basis for discriminatory acts under Title VII."). *Accord Spearman v. Ford Motor Co.*, 231 F.3d 1080, 1084-85 (7<sup>th</sup> Cir. 2000); *Hamm v. Weyauwga Milk Products, Inc.*, 332 F.3d 1058, 1066 (7<sup>th</sup> Cir. 2003). Thus, any suggestion by Defendants that accommodating Summers' sincerely held religious beliefs would violate the rights of other employees or to be a form of "reverse discrimination" based on sexual orientation is also clearly without merit.

III. **CONCLUSION**

Accordingly, this case is ripe for summary judgment, and Plaintiff, Linda Summers, respectfully demands that, based on the record under submission, including the Verified Complaint and exhibits, as well as sworn deposition testimony, judgment on liability for violation of the religious discrimination prohibition of Title VII should be granted in Plaintiff's favor because it is apparent there is no genuine issue as to any material fact on liability herein. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986); *Weeks v. Samsung*, *supra* at 933-934; *Lexington-South Elkhorn Water District v. City of Wilmore*, 93 F.3d 230 (6<sup>th</sup> Cir. 1996) (where record on file shows there is no genuine issue as to any material fact and moving party is entitled to judgment as a matter of law, summary judgment is appropriate).

Respectfully submitted,

**MASTERS, MULLINS & ARRINGTON**

s/ Richard L. Masters

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INDEX TO EXHIBITS

- A. Whitis email dated October 22, 2014
- B. Summers Religious Accommodation Request dated December 9, 2014
- C. Whitis Memorandum dated December 9, 2014
- D. Harrison County Personnel Policies Handbook, adopted June 16, 2014, p. 9
- E. Deposition of Linda Summers, January 27, 2016, title page and pp 127-128, 131-133
- F. Deposition of Sally Whitis, February 18, 2016, title page and pp 33-34, 39-42, 49

**Yvonne Beanblossom**

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**From:** Sally Whitis  
**Sent:** Wednesday, October 22, 2014 9:40 AM  
**To:** Sherry Brown; Rilla Gerdon; Linda Elsler; Yvonne Beanblossom; Tammy Bickel; Joy Bline; Wanda Kirkham; Linda Summers  
**Subject:** Gay Marriage License

While I was on vacation, the Supreme Court has ordered Indiana to proceed with gay marriages.

Therefore, it is our duty in the Clerk's Office to process those applications. The process in Incite has been modified to accommodate these filings.

Even though it may be against your personal beliefs, we are required by state law to process their applications. We are only doing the paperwork and not performing their ceremony.

I expect everyone to please comply. Thanks.

Sally A. Whitis, Clerk  
Harrison Circuit Court  
300 N. Capitol Ave.  
Corydon, IN 47112  
Tel: (812) 738-4289 (Circuit)  
Tel: (812) 738-8149 (Superior)

## RELIGIOUS ACCOMMODATION REQUEST

December 9, 2014

Sally Whitis  
Clerk of Harrison Superior/Circuit Courts  
Suite 3126  
1445 Gardner Lane NW  
Corydon, IN 47112

RE: Same Sex Marriage License

Dear Sally,

I have a sincerely held religious belief against providing marriage license for same sex couples. I wish to claim the right to refrain from the work task of providing same sex couples a marriage license because it violates my religious beliefs. I believe the Bible to be the Word of God and I base my beliefs on biblical scripture.

It is not my intent to create any undue hardship, and I am certain that this accommodation request does not cause an undue hardship in the normal conduct of business, since there are two employees who have offered and have no problem with processing same sex marriage licenses.

Therefore, I am respectfully requesting that you, my employer, accommodate my sincerely held religious belief by not requiring me to perform the task of processing marriage license for same sex couples.

Sincerely & Respectfully,



Linda Summers  
Second Deputy Clerk  
Harrison Superior Court

# Memorandum

**To:** LINDA SUMMERS  
**Date:** December 9, 2014  
**From:** SALLY WHITIS, CLERK  
**Re:** EMPLOYMENT STATUS

---

Please be informed that effective immediately your employment with the Clerk's Office is terminated due to insubordination, as is defined in the Handbook on page 64.

Please provide me with your keys and an updated time sheet, and make arrangements with the Auditor's Office to complete an exit interview.

- 1.4.1 Reviewing employee complaints in connection with the problem resolution procedure in the Harrison County Personnel Policies Handbook and providing advisory recommendations as warranted;
- 1.4.2 Monitoring personnel policies and procedures and making recommendations for revisions, modifications, additions, and deletions as deemed necessary; and
- 1.4.3 Reviewing all standard operating procedures adopted by any department. The Harrison County Personnel Administration Committee shall serve yearly and be comprised of four (4) members. The members of the Personnel Administration Committee shall be one (1) County Commissioner (appointed by the County Commissioners), one (1) County Council member (appointed by the County Council), the County Attorney (by virtue of the office), and the County Auditor (by virtue of the office).

## 1.4 EQUAL EMPLOYMENT OPPORTUNITY

It is the policy of the County of Harrison to provide equal opportunity in employment to all employees and applicants for employment and to prohibit discrimination in employment because of race, religion, color, sex, age, national origin, disability, military status, or any other classification protected under applicable law.

This policy applies to all terms, conditions, and privileges of employment, including, but not limited to, hiring, probation, training, promotion, transfer, compensation, benefits, layoff, recall, employee facilities, discharge, and retirement.

## 1.5 MANAGEMENT RIGHTS

Harrison County retains the responsibility and authority to manage and direct on behalf of the public the operations and activities of the County to the full extent authorized by law. Such responsibility and authority shall include but not be limited to:

- 1.5.1 The right to direct the work of its employees;
- 1.5.2 The right to establish policy;
- 1.5.3 The right to maintain the efficiency of public operations;
- 1.5.4 The right to design and implement safety programs for employees;
- 1.5.5 The right to design and implement job training for employees;
- 1.5.6 The right to determine what services shall be rendered to the public;
- 1.5.7 The right to determine job content and job descriptions;
- 1.5.8 The right to determine and implement objectives and goals of the County;
- 1.5.9 The right to establish, allocate, schedule, assign, modify, change, and discontinue County operations, work shifts, and working hours;
- 1.5.10 The right to establish, change, and discontinue work standards;
- 1.5.11 The right to hire, examine, classify, train, transfer, assign, and retain employees; suspend, discharge, or take other disciplinary action against employees in accordance with applicable law and to relieve employees from duties due to disciplinary reasons or other legitimate reasons; and make promotions and demotions;
- 1.5.12 The right to change, modify, and alter the composition of the work force;
- 1.5.13 The right to determine, establish, and implement policies for the selection, training, and promotion of employees in accordance with applicable law;
- 1.5.14 The right to establish, implement, modify, and change procedures and policies for the safety, health, and protection of County property and personnel;
- 1.5.15 The right to adopt, modify, change, enforce, or discontinue any existing rules, regulations, procedures, and policies;
- 1.5.16 The right to establish, select, modify, change, or discontinue equipment, materials, and the layout and arrangement of equipment;
- 1.5.17 The right to determine the size and character of inventories and their disposal;
- 1.5.18 The right to control the use of property, machinery, inventories, and equipment owned, leased, or borrowed by the County;

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
AT NEW ALBANY

LINDA G. SUMMERS,

Plaintiff,

vs.

Case No. 4:15-CV-00093-RLY-DML

SALLY WHITIS in her official capacity  
As HARRISON COUNTY CLERK

and

HARRISON COUNTY, a political  
Subdivision of the State of Indiana,

Defendant.

- - -

The continuation of the deposition of LINDA G. SUMMERS, taken on the 27th day of January, 2016 at 3620 Blackiston Boulevard, Suite 200, New Albany, Indiana; said deposition taken upon oral examination, to be read and used at the hearing of the above-styled action; the reading and signing of the deposition being reserved; commencing at 10:00 a.m., before Marcee O. LaHue, Court Reporter.

Legalese Reporters, LLP

719 Shiloh Road SE

Corydon, IN 47112

812-736-9389

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<p>1       individually, and she was an employee as well.</p> <p>2       MR. MASTERS: Well, I -- that's true.</p> <p>3       MS. KEMP: So that's --</p> <p>4       MR. MASTERS: Anyway.</p> <p>5       MS. KEMP: -- just trying to clarify.</p> <p>6       BY MS. KEMP: (Resuming)</p> <p>7       Q. Do you know if Ms. Beanblossom quit her employment or was terminated?</p> <p>8       A. She quit.</p> <p>9       Q. Do you know why she quit?</p> <p>10      A. She was unhappy there.</p> <p>11      Q. And you don't know when it was that she quit?</p> <p>12      A. Whenever the new election in -- the end of the year. I think it was ... she got a new job in the Treasurer's Office.</p> <p>13      Q. Okay. Any other former clerk employees that you've spoken with about your lawsuit since its filing?</p> <p>14      A. Would you repeat the question?</p> <p>15      Q. Are there any other former Clerk's Office employees that you've spoken with about your lawsuit?</p> <p>16      A. No.</p> <p>17      Q. Okay.</p> <p>18      A. Besides Yvonne.</p> <p>19      Q. Right. What do you consider your religion to be?</p> <p>20      A. Christian.</p>	<p>1       A. No.</p> <p>2       Q. -- prior to your termination?</p> <p>3       A. No.</p> <p>4       Q. So you did not seek counseling or guidance from any of your religious leaders?</p> <p>5       A. Just sermons and -- Randy's sermons.</p> <p>6       Q. Okay. And you said you -- your interpretation --</p> <p>7       A. I prayed -- I prayed about it, I listened, and I read the Bible, and that's my ...</p> <p>8       Q. Okay.</p> <p>9       A. I felt led.</p> <p>10      Q. Do you believe that the Bible condones divorces?</p> <p>11      A. By all means that he wants marriage, but yes, I think there are exceptions.</p> <p>12      Q. Okay. What God has joined, let no man put asunder; are you familiar with that Bible verse?</p> <p>13      A. Yes.</p> <p>14      Q. Okay. Did you ever question individuals that were asking about information about divorces as to what the basis for their divorce would be?</p> <p>15      A. No. That's not my ...</p> <p>16      Q. Okay. The position --</p> <p>17      A. -- not to make a decision whether ...</p> <p>18      Q. Do you know if the position in the Circuit Clerk's Office involved at times the processing of</p>
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<p>1       Q. I know you said I think you went to a Methodist church.</p> <p>2       A. Uh-huh (affirmative).</p> <p>3       Q. Do you consider yourself to be of the Methodist denomination or --</p> <p>4       A. Just a Christian.</p> <p>5       Q. -- just a Christian?</p> <p>6       And tell me -- and I just want from your personal view and understanding. You've filed a suit alleging that based on your religious belief that you could not process or be involved in any way in a same-sex marriage license, tell me on what you are basing that.</p> <p>7       A. Upon the Bible - verses.</p> <p>8       Q. Okay. What Bible verses or what belief do you believe prohibited you from processing a same-sex marriage license?</p> <p>9       A. What belief or Bible verses?</p> <p>10      Q. Yeah. What Bible verses?</p> <p>11      A. Leviticus 18 and Romans 1 and Genesis 2, 1 Corinthians 2, I believe. I'd have to look at my bible.</p> <p>12      Q. I asked you particularly about Reverend Randy Kirk and whether or not you spoke with him prior to your termination about the issue of same-sex marriage licenses, and you told me no. Did you speak with any other pastor or minister about that --</p>	<p>1       divorces?</p> <p>2       A. Repeat?</p> <p>3       Q. The position in the Circuit Clerk's Office, --</p> <p>4       A. Mmh-hmm.</p> <p>5       Q. -- do you know whether or not that involved the processing of divorces?</p> <p>6       A. Yes.</p> <p>7       Q. Okay. But you were interested in that position?</p> <p>8       A. The position that I applied --</p> <p>9       Q. Yes.</p> <p>10      A. -- was in Civil Claims. That's what I applied for.</p> <p>11      Q. Okay. And that's what I'm --</p> <p>12      A. I don't know -- I didn't know at that time whether she handled divorces. I don't think she did. I might be wrong on that, but that's what I applied for was for Civil Claims.</p> <p>13      Q. Did you ever ask Sally or anyone before you explored that, whether or not --</p> <p>14      A. No.</p> <p>15      Q. -- Let me finish.</p> <p>16      A. Okay.</p> <p>17      Q. Whether or not you would have to have any dealings with divorces?</p> <p>18      A. I did not.</p>

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<p style="text-align: center;">Page 130</p> <p>1       Q. Okay.      2       A. But God does allow divorce for ... for desertion      3       or infidelity.      4       Q. And where in the Bible does it say that?      5       A. In Romans, I believe. I'll have to get that for      6       you. I will provide that for you.      7       Q. But as we sit here, you don't know?      8       A. No. I -- it's in Romans I'm pretty sure.      9       Q. Do you feel if the role within the Clerk's Office      10      had changed and you were required to help facilitate the      11      paperwork for divorces just as you did with marriage      12      licenses, would you have felt the same need to decline or      13      refuse to do that work based on your religious beliefs?      14      A. No.      15      Q. Why not?      16      A. Because God does allow for infidelity -      17      unfaithfulness; he does allow divorce, so therefore, it's      18      not me to determine -- to judge whether that person is      19      getting a divorce based on that reason.      20      Q. Okay.      21      A. I don't think that's indicated on the paper why      22      they are getting a divorce.      23      Q. So you didn't think you should judge why the      24      people were seeking divorces?      25      A. Yes.</p>	<p style="text-align: center;">Page 132</p> <p>1       A. I'm not passing judgement on homosexuals in no      2       way or form. I'm just saying it's not God's law to have      3       them marry.      4       Q. And you would not process a marriage license for      5       them?      6       A. Right, because I get -- I feel like it's against      7       God's law.      8       Q. Okay. But you would process a marriage license      9       for a heterosexual couple?      10      A. Yes.      11      Q. And you were aware that it was the law in Indiana      12      that the Clerk's Office process same-sex marriage licenses?      13      A. In 2014 in October, yes.      14      Q. Yes. And it was the law in -- on December 8th,      15      2014?      16      A. Yes.      17      Q. Okay. And you refused to do it?      18      A. I said I can't do it.      19      Q. Okay. I -- I don't --      20      A. That's what I -- I'm not putting words in. I'm      21      just -- I said I can't do it.      22      Q. And you were told to do it?      23      A. She said I was required to do it; yes.      24      Q. And did --      25      A. Is what she said.</p>
<p style="text-align: center;">Page 131</p> <p>1       Q. But you did think that you should judge and      2       prohibit the individuals -- or, not be involved in the      3       individuals seeking a same-sex marriage license --      4       MR. MASTERS: Okay. I'm going to object to the      5       form of the question. I think it's argumentative.      6       She's said there are verses that she's relied on for      7       the proposition that divorce is allowed under certain      8       circumstances in the scripture.      9       MS. KEMP: Okay. And I'm using her words, and      10      just asking.      11      BY MS. KEMP: (Resuming)      12      Q. She viewed divorce to be different than same-sex      13      marriage?      14      A. Yes.      15      Q. Okay. Do you believe the Bible condones biracial      16      marriages?      17      A. I don't know that the Bible has anything in there      18      about biracial marriages.      19      Q. Are you aware of verses within the Bible that      20      speak about negroes or dark-skinned individuals?      21      A. Yes.      22      Q. Okay. Are you -- do you believe there to be      23      basis from the Bible to have a racial bias?      24      A. No.      25      Q. Okay.</p>	<p style="text-align: center;">Page 133</p> <p>1       Q. -- you do it?      2       A. I said I can't, and she proceeded to do it.      3       That's what took place.      4       Q. So are you telling me you didn't refuse to do it?      5       A. No. I'm just saying I can't -- I -- Yes.      6       Basically I said I can't do it; I refused to do it.      7       Q. Okay. And at no point in time prior to that      8       point had you asked Sally or any superior at the Clerk's      9       Office for a religious accommodation?      10      A. At that point?      11      Q. Yes.      12      A. No.      13      Q. The first religious accommodation request that      14      you made was on December --      15      A. December 9th.      16      Q. -- 9th?      17      I'm going to ask you a few questions about some      18      of the documents that you provided to us. And some of this      19      is just really to get ... clarification and find out if it      20      has any relevancy. I'm going to show you a copy of some      21      excerpts from a calendar that I believe is from 2013 -      22      various dates.      23      A. Yes.      24      Q. And I believe this was in the packet of      25      information that you -- you have with you today and you had</p>

34 (Pages 130 to 133)

IN THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF  
INDIANA AT NEW ALBANY  
STATE OF INDIANA

LINDA G. SUMMERS,

Plaintiff,

vs.

CASE NO: 4:15-CV-00093-RLY-DML

SALLY WHITIS in her official capacity  
As HARRISON COUNTY CLERK

and

HARRISON COUNTY, a political  
Subdivision of the State of Indiana,

Defendants.

- - -

The deposition of SALLY WHITIS, taken on the 18th day of February, 2016 at 219 North Capital Avenue, Corydon, Indiana; said deposition taken upon oral examination, to be read and used at the hearing of the above-styled action; the reading and signing of the deposition being waived; commencing at 9:50 a.m., before Marcee O. LaHue, Court Reporter.

Legalese Reporters, LLP

719 Shiloh Road SE

Corydon, IN 47112

812-736-9389

2/18/2016

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1 staff members explicitly stated to you that they objected  
 2 to performing the same-sex marriages?

3 A. They did not.

4 Q. Okay. So explain to me what your understanding  
 5 was of the attitudes in the office that led you to mention  
 6 that even though it may be against your personal beliefs?

7 A. Because we'd had the discussions before that we  
 8 all maybe didn't agree with the process, but ... we had to  
 9 do it because of State law.

10 Q. Okay. And were any of the beliefs that were  
 11 expressed stated to be religious beliefs?

12 A. They were not.

13 Q. Now, do you remember having any discussions prior  
 14 to October 22nd, 2014 with Linda Summers about her beliefs  
 15 or attitudes towards same-sex marriage?

16 A. Not that I recall.

17 Q. Do you remember having any individual discussions  
 18 with any of the other Deputy Clerks about their religious  
 19 beliefs concerning same-sex marriage?

20 A. I did not.

21 Q. When did Linda's job end -- or, when did her  
 22 employment end with your office?

23 A. I don't have the specific date.

24 MS. KEMP: Do you want to show her the --

25 MR. MASTERS: I was going to say, I --

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1 A. Yes, I received that.

2 Q. All right. And the date on it is December 9th,  
 3 2014; is it not?

4 A. Yes.

5 Q. And it's addressed to you, as the Clerk of the  
 6 Harrison County Superior, slash, Circuit Courts with the  
 7 address of the Courts; is that correct?

8 A. Yes.

9 Q. All right. Do you recall receiving this from  
 10 Linda?

11 A. Yes.

12 Q. And do you recall how you received it?

13 A. She'd put an envelope on my desk.

14 Q. Okay. And that would've presumably been December  
 15 9th, 2014, which is the date of this letter?

16 A. I believe it was.

17 Q. All right. Did you -- do you recall reviewing  
 18 it?

19 A. Yes; I read it.

20 Q. Do you recall your reaction to the letter when  
 21 you received it?

22 A. I had already decided the day before when the  
 23 incident happened with the same-sex couple that her  
 24 termination was forth-coming. And I read this, but had  
 25 also previously prepared or was preparing a letter of

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1 BY MR. MASTERS: (Resuming)

2 Q. We have alleged - and there's documents that I  
 3 think are not controverted that indicate that December 9th  
 4 appears to be the date of termination. Does that seem  
 5 consistent with your recollection?

6 A. It could be. I don't know the specific --

7 Q. If that's what the record --

8 A. -- date. If that's what the records --

9 Q. -- that's what the record indicates, you don't  
 10 have any dispute over that?

11 A. I do not.

12 MS. KEMP: Do you want to show her the  
 13 termination memo?

14 MR. MASTERS: Well, I do, but I want to show her  
 15 something else before that.

16 MS. KEMP: Okay.

17 (Whereupon, Counsel marked  
 18 Plaintiff's Exhibit B for  
 19 identification.)

20 BY MR. MASTERS: (Resuming)

21 Q. So if the records show that Linda was terminated  
 22 on December the 9th, 2014, do you recall prior to her  
 23 termination, receiving a document that I want to hand to  
 24 you that is entitled Religious Accommodation Request, which  
 25 I've just handed you?

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1 termination.

2 Q. All right. So the events that prompted Linda to  
 3 give you this letter entitled Religious Accommodation  
 4 Request, the events leading up to that had occurred the day  
 5 before, which would be December 8th, 2014, correct?

6 A. Yes.

7 Q. All right. And exactly what occurred, based on  
 8 your memory, on December the 8th?

9 A. A couple came to the counter and said they were  
 10 wanting to do a marriage license. And Linda had gone to  
 11 the counter, and then went to her computer and opened up  
 12 the Incite program. And when she realized that they were a  
 13 same-sex couple looking at the paperwork, she came to me  
 14 and said she couldn't do it. And I said, "Yes, you can,"  
 15 and she said, "No, I can't." And so I took the paperwork  
 16 and proceeded to process the application myself.

17 Q. Did you have any other discussion with her --  
 18 with Linda about this on December the 8th?

19 A. After we proceeded to finish the application and  
 20 the couple left, I told her that that could not happen  
 21 again, because it was her job to do those.

22 Q. And did she say anything more to you after you  
 23 made that statement to her on December the 8th?

24 A. I don't recall any other conversation that  
 25 afternoon.

9 (Pages 30 to 33)

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<p>1       Q. So between that conversation on December the 8th,  2       the next time you heard from Linda about this issue was  3       receiving this Religious Accommodation Request on December  4       the 9th when it was in your chair?</p> <p>5       A. On my desk, yes.</p> <p>6       Q. Or, on your desk. Okay. After you received this  7       letter and read it, did you consult with anyone concerning  8       Linda's Request for Religious Accommodation?</p> <p>9       A. No.</p> <p>10      Q. Did you understand this to be a statement by  11       Linda that her reason for not processing the same-sex  12       marriage license on December the 8th was because of her  13       religious beliefs?</p> <p>14      A. Yes, I understood that.</p> <p>15      Q. Do you have any reason and did you have any  16       reason to believe at the time that Linda was not sincere  17       about her religious belief concerning same-sex marriage, as  18       expressed in this letter?</p> <p>19      A. No, I --</p> <p>20      MS. KEMP: Objection. Calls for speculation.  21       You can answer if you know.</p> <p>22      BY THE WITNESS: (Resuming)</p> <p>23      A. No, I did not.</p> <p>24      Q. You have no reason to believe that she was not  25       sincere? A. That's correct.</p>	<p>1       A. That's correct.</p> <p>2       Q. All right. You make reference in the first  3       sentence that Linda's employment is terminated due to  4       insubordination, as defined in the Handbook on Page 64.  5       Is that correct reading of that first sentence?</p> <p>6       A. Yes.</p> <p>7       Q. Are you referring to the Harrison County Employee  8       Policies Manual?</p> <p>9       A. Yes.</p> <p>10      Q. Or, Handbook. Do you know if Linda had a copy of  11       that? A. She did.</p> <p>12      Q. Is that something that employees were given when  13       they were employed at the Clerk's Office?</p> <p>14      A. Every employee is given a copy.</p> <p>15      Q. Were they required to sign any kind of an  16       acknowledgement that they received it?</p> <p>17      A. They were.</p> <p>18      Q. Do you happen to have a copy of her  19       acknowledgement?</p> <p>20      A. I don't have it on me.</p> <p>21      Q. It may be part of the record already.</p> <p>22      MS. KEMP: Yeah. We turned over her -- I can't  23       remember if we did it in her depo. I think she  24       testified that she had received it, but --</p> <p>25      MR. MASTERS: Yeah. I believe so, too.</p>
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<p>1       Q. Okay.</p> <p>2       MR. MASTERS: I'd like to ask that this be  3       attached as Plaintiff's Exhibit B to the deposition.</p> <p>4       MS. KEMP: No objection.</p> <p>5       MR. MASTERS: Okay.</p> <p>6      BY MR. MASTERS: (Resuming)</p> <p>7       Q. Now, Sally, I want to hand you a one-page  8       document headed as Memorandum to Linda Summers, dated  9       December 9th, 2014, and ask if you can identify this  10       document?</p> <p>11      A. That was a termination letter dated December 9th.</p> <p>12      Q. All right.</p> <p>13      MR. MASTERS: And let me ask first this be marked  14       as Plaintiff's Exhibit C and attached to the depo.</p> <p>15      MS. KEMP: No objection.</p> <p>16       (Whereupon, Counsel marked  17       Plaintiff's Exhibit C  18       for identification.)</p> <p>19      BY MR. MASTERS: (Resuming)</p> <p>20      Q. I take it from the memo, that this was prepared  21       and given to Linda on December the 9th, 2014?</p> <p>22      A. I don't know that I drafted it on the evening of  23       the 8th or the morning of the 9th.</p> <p>24      Q. All right. But you didn't give it to her until  25       the 9th?</p>	<p>1       MS. KEMP: -- we've turned over her Handbook, so  2       -- or, I mean, we've turned over her entire personnel  3       file.</p> <p>4       MR. MASTERS: Yeah. You have.</p> <p>5      BY MR. MASTERS: (Resuming)</p> <p>6       Q. But you did require employees to sign an  7       acknowledgment that they'd received it?</p> <p>8       MS. KEMP: Are you asking during the time that  9       she was clerk?</p> <p>10      MR. MASTERS: Yeah.</p> <p>11      BY MR. MASTERS: (Resuming)</p> <p>12      Q. During the time you were Clerk, do you know?</p> <p>13      A. The Auditor's Office had done a complete redo of  14       the Handbook, and every employee of the County was required  15       to read it and sign it - acknowledgement of receiving a  16       copy.</p> <p>17      Q. Prior to firing Linda, did you review the  18       Handbook of the Harrison County Clerk Employee Policies?</p> <p>19      A. I did.</p> <p>20      Q. And what was the insubordination which you were -  21       - to which you were referring in this memorandum firing  22       Linda?</p> <p>23      A. She refused to do a task that she was asked to  24       do.</p> <p>25      Q. And that was refusal to process the same-sex</p>

10 (Pages 34 to 37)

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<p style="text-align: center;">Page 38</p> <p>1 marriage license on December the 8th, 2014?</p> <p>2 A. Yes.</p> <p>3 Q. All right. Let me hand you another Exhibit --</p> <p>4 or, another document that I'd like to make an Exhibit,</p> <p>5 which is a page which is exerted from the Harrison County</p> <p>6 Personnel Policies Handbook, adopted June 16th, 2014 and</p> <p>7 ask you if that appears to be an accurate copy of that page</p> <p>8 involving Equal Employment Opportunity and Management</p> <p>9 Rights?</p> <p>10 A. Yes, I guess it is.</p> <p>11 Q. You don't have any reason to dispute the</p> <p>12 authenticity of this as far as you know?</p> <p>13 A. I do not.</p> <p>14 Q. Okay.</p> <p>15 MR. MASTERS: I'd like to ask that this be marked</p> <p>16 as Plaintiff's Exhibit D.</p> <p>17 MS. KEMP: No objection.</p> <p>18 (Whereupon, Counsel marked</p> <p>19 Plaintiff's Exhibit D for</p> <p>20 identification.)</p> <p>21 BY MR. MASTERS: (Resuming)</p> <p>22 Q. And can you took with me, Sally, at Paragraph</p> <p>23 1.4, Equal Employment Opportunity, and that first sentence</p> <p>24 that reads (reading) It is the policy of the County of</p> <p>25 Harrison to provide equal opportunity in employment to all</p>	<p style="text-align: center;">Page 40</p> <p>1 and marked as an Exhibit, that her refusal to process that</p> <p>2 marriage license was because of her religion?</p> <p>3 MS. KEMP: And you're referring to the letter</p> <p>4 that was provided the day after the incident?</p> <p>5 MR. MASTERS: Yes.</p> <p>6 MS. KEMP: Okay.</p> <p>7 BY THE WITNESS: (Resuming)</p> <p>8 A. Yeah. The day that she gave me that after it</p> <p>9 happened. Q. Right. But there's no question in your</p> <p>10 mind, is there, that the reason she stated for not</p> <p>11 processing the license was because of her religious</p> <p>12 beliefs, right?</p> <p>13 A. Yes. I understand that.</p> <p>14 Q. Okay. Prior to firing Linda, did you make any</p> <p>15 effort to determine if there was some way you would've</p> <p>16 accommodated her stated religious belief in opposition to</p> <p>17 processing same-sex marriage licenses?</p> <p>18 A. In the office that we work in, it would not have</p> <p>19 worked, because there's lots of times when there's just one</p> <p>20 person in the office, and somebody could be on vacation or</p> <p>21 at lunch. And if a couple comes to the counter, I did not</p> <p>22 want anybody turned away because we were not going to</p> <p>23 process their application.</p> <p>24 Q. But you were only processing two applications for</p> <p>25 marriage licenses a month, which is what you stated earlier</p>
<p style="text-align: center;">Page 39</p> <p>1 employees and applicants for employment and to prohibit</p> <p>2 discrimination in employment because of race, religion,</p> <p>3 color, sex, age, national origin, disability, military</p> <p>4 status or any other classification protected under</p> <p>5 applicable laws.</p> <p>6 Is that what that says?</p> <p>7 A. That's what it says.</p> <p>8 Q. Prior to firing Linda, were you aware that the</p> <p>9 Harrison County Personnel Policies Handbook contained a</p> <p>10 policy prohibiting discrimination in employment?</p> <p>11 A. Yes. I'm sure I was aware of it.</p> <p>12 Q. And prior to firing Linda, were you aware that</p> <p>13 the Harrison County Personnel Policies Handbook, in the</p> <p>14 paragraph -- or, the sentence we just read contains a</p> <p>15 policy prohibiting discrimination in employment because of</p> <p>16 religion?</p> <p>17 A. That's what it says.</p> <p>18 Q. Prior to firing Linda, did you consider the fact</p> <p>19 that there is such a policy or there was such a policy in</p> <p>20 effect in Harrison County?</p> <p>21 A. I considered the fact that we were under a State</p> <p>22 order to provide the services to the community that we did,</p> <p>23 and our religion didn't come into that play.</p> <p>24 Q. Did you understand that Linda was asserting,</p> <p>25 however, in the document that we've already talked about</p>	<p style="text-align: center;">Page 41</p> <p>1 --</p> <p>2 A. Possibly; yes.</p> <p>3 Q. Okay. Of the two a month, on average --</p> <p>4 MS. KEMP: And I'm just going to -- I'm going to</p> <p>5 say she said on average. That was an estimate. I</p> <p>6 don't think we have any exact figures.</p> <p>7 BY MR. MASTERS: (Resuming)</p> <p>8 Q. All right. But assuming that's close to reality</p> <p>9 -- and I'm going to assume you would know that - of the two</p> <p>10 licenses per month on average, how many of those, which</p> <p>11 would average out to 24 a year, would be same-sex marriage</p> <p>12 applications?</p> <p>13 A. (No response.)</p> <p>14 Q. Less than half?</p> <p>15 A. Yes, less than half.</p> <p>16 Q. All right. And if there were so few applications</p> <p>17 as two a month, wouldn't it have been possible for another</p> <p>18 Deputy Clerk to process those applications in Linda's</p> <p>19 absence?</p> <p>20 A. Not if they were the only one in the office at</p> <p>21 the time.</p> <p>22 Q. Couldn't they go over to the Circuit Clerk's</p> <p>23 Office a mile away and be serviced there?</p> <p>24 A. They could, but that's inconvenient to the public</p> <p>25 to refer them to go somewhere else.</p>

11 (Pages 38 to 41)

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1 Q. But it was certainly possible for them to go to  
 2 the Circuit Clerk's Office, and in fact, most marriage  
 3 licenses were processed at the Circuit Clerk's Office in  
 4 the Circuit Court, right?

5 A. It would be possible, but I did not want people  
 6 to have to get the run-around and go somewhere else.

7 Q. All right. So while it would've been possible to  
 8 make an accommodation, you decided that it was not  
 9 something that you would do?

10 A. That's correct.

11 MR. MASTERS: I may be close to finished, but I  
 12 would like to consult with Linda for just a minute.  
 13 Could we possibly take short break?

14 MS. KEMP: Sure. Yeah. That's fine.

15 (Whereupon, a brief recess was taken.)

16 MR. MASTERS: We are going back on the record for  
 17 me to declare that I am finished with my examination,  
 18 and if Ms. Kemp -- if Laurie has anything to ask, she  
 19 can do so.

20 MS. KEMP: Okay.

21 CROSS-EXAMINATION

22 BY MS. KEMP:

23 Q. Sally, I just have a few follow-up questions for  
 24 you. At any point on December 8th, did Ms. Summers  
 25 indicate to you that the reason that she could not or would

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1 Q. Okay. Did Ms. Summers' religion -- religious  
 2 beliefs play any part in your decision to terminate her?

3 A. It did not.

4 Q. Did you treat her any differently because of her  
 5 religious beliefs?

6 A. I did not.

7 Q. Did you apply the policies any differently to her  
 8 because of her religious beliefs?

9 A. I did not.

10 Q. You were asked some questions about the number of  
 11 marriage licenses that were processed by your offices. Do  
 12 individuals call ahead in advance and make appointments, or  
 13 do they just walk in for the processing of marriage  
 14 licenses?

15 A. They usually just walk in.

16 Q. Okay. So do you have any idea on any given day  
 17 how many individuals will come in for marriage licenses?

18 A. No.

19 Q. And you said I think an average two to three - I  
 20 think you said a few - each month typically come in; is  
 21 that correct?

22 A. To Superior Court.

23 Q. To Superior Court. Are there months where there  
 24 are more than two or three?

25 A. There could be months where there's more; there

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1 not process the marriage license for the same-sex couple  
 2 was due to her religious beliefs?

3 A. No.

4 Q. Did she request a Religious Accommodation at that  
 5 point in time?

6 A. No.

7 Q. At any point in time from the October date of the  
 8 email that was shown to you when you advised the Clerk  
 9 employees - the staff - that they would be processing this,  
 10 at any point from that time through December 8th, did Ms.  
 11 Summers come to you and advise you that because of her  
 12 religious beliefs, she could not do this or was requesting  
 13 a Religious Accommodation?

14 A. No.

15 Q. Okay. When was the decision made to terminate  
 16 Ms. Summers?

17 A. The afternoon of December the 8th.

18 Q. Okay. And who made that decision?

19 A. I did.

20 Q. Did you consult with anyone or take any steps --  
 21 If you made the decision, why wasn't it conveyed to Ms.  
 22 Summers on the 8th? Let me ask that question.

23 A. I wanted to consult with Mr. Byrd, the County  
 24 Attorney, and Karen Engleman, the County Auditor on exactly  
 25 what I needed to do to proceed with the termination.

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1 could be months when there's less.

2 Q. And as the public becomes aware of Superior  
 3 Court's processing of marriage licenses, do you believe  
 4 that there's likely to be an increase in individuals coming  
 5 to Superior Court as opposed to just Circuit Court?

6 A. Yes. And we have tried to -- due to the fact  
 7 that Circuit Court had gotten busy doing passport  
 8 applications, we were telling them that if people did call  
 9 in, that they could be referred to Superior Court, and we  
 10 would process them there to help take some workload off of  
 11 Circuit Court.

12 Q. Okay. So if someone came in -- or, if someone  
 13 called --

14 A. If they called.

15 Q. Okay. They could be told that they could go to  
 16 either office?

17 A. Correct.

18 Q. Would you have any way to know on any given day  
 19 whether a same-sex couple would come in for a marriage  
 20 license into either Superior or Circuit Clerk's Office?

21 A. Wouldn't have any way of knowing.

22 Q. So could you make any advance arrangements to  
 23 ensure that someone would've been there with Ms. Summers?

24 A. No.

25 Q. You were asked the question about why you did not

12 (Pages 42 to 45)

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**SALLY WHITIS****SUMMERS v. WHITIS, et al.**

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<p>1     -- or, provide the accommodation of allowing Ms. Summers      2     not to process same-sex marriage licenses, and I believe      3     you said you didn't think it would work in your office,      4     correct?</p> <p>5       A. Yes.</p> <p>6       Q. Can you explain that; why did you think that      7     would not work?</p> <p>8       A. Well, because there's only three of us there.      9     I'm in and out a lot of times going downtown, taking money,      10    coming back, going to appointments. We have vacations; we      11    have lunches; we have -- And lots of times, there's just      12    one person in the office, and if someone comes to the      13    office and wishes to process a marriage license, I don't      14    want to have to turn somebody away, because in that event,      15    if we were to tell them we couldn't do it because of their      16    same-sex application, then I'm discriminating against them.</p> <p>17       Q. Does the County have policies against discrim --</p> <p>18       A. Policies against discrimination.</p> <p>19       MS. KEMP: Those are all the questions I have for      20    you.</p> <p>21            REDIRECT EXAMINATION</p> <p>22    BY MR. MASTERS:</p> <p>23       Q. Well, I'm going to have a couple follow-ups. So      24    you did have a conversation with the Harrison County      25    Attorney and the Harrison County Auditor on December the</p>	<p>1     Accommodation Request?</p> <p>2       A. I did not.</p> <p>3       Q. And did you seek any other advice about whether      4     or not there might be some duty under the Harrison County      5     Personnel Policies Handbook, Equal Employment Opportunity      6     Policy to consider her request?</p> <p>7       A. I did not.</p> <p>8       Q. All right.</p> <p>9       MR. MASTERS: That's all the questions I have.</p> <p>10            RECROSS-EXAMINATION</p> <p>11    BY MS. KEMP:</p> <p>12       Q. Did you yourself consider the request even though      13    you received it after the incident of insubordination and      14    after the decision to terminate was made?</p> <p>15       A. Did I consider it?</p> <p>16       Q. Yes.</p> <p>17       A. I considered it, but there was no way that I      18    could accommodate her and not accommodate every other      19    employee in my office.</p> <p>20       MS. KEMP: That's all.</p> <p>21            FURTHER REDIRECT EXAMINATION</p> <p>22    BY MR. MASTERS:</p> <p>23       Q. I have a follow-up, then. You told me that there      24    were ten women who were Deputy Clerks, including Linda      25    Summers, and as far as I know, Sally, the only one who</p>
<p>1     8th concerning whether you should fire Linda Summers?</p> <p>2       A. Not whether I should fire Linda Summers, but      3     making sure what I had to do to effect the termination.</p> <p>4       Q. And what exactly do you mean by that? In other      5     words, how you were to make the notice to her or what you      6     were to say?</p> <p>7       A. To make sure that I was within my right and      8     following the policy of the County and just to make sure      9     that exactly how I handled the termination letter.</p> <p>10       Q. Okay. And when you're referring to the policy of      11    the County, you're talking about the policy regarding      12    insubordination?</p> <p>13       A. Correct.</p> <p>14       Q. Not accommodation of religion under the --</p> <p>15       A. That's correct.</p> <p>16       Q. -- Equal Opportunity Policy?</p> <p>17       A. That's correct.</p> <p>18       Q. And it wouldn't have made any difference if you      19    had received Linda's Religious Accommodation Letter on      20    December the 8th in terms of what your decision would've      21    been to fire it, would it?</p> <p>22       A. Nope.</p> <p>23       Q. After you received that Religious Accommodation      24    Request on December the 9th, did you consult with the      25    Harrison County Attorney or the Auditor about the Religious</p>	<p>1     expressed to you that there was a religious reason why she      2     felt she could not process these licenses was Linda; is      3     that right?</p> <p>4       A. Yes, after the fact.</p> <p>5       Q. Well, on December the 9th, before you gave her      6     the memorandum confirming that she was fired.</p> <p>7       A. Correct.</p> <p>8       Q. And so there were nine other women in that      9     office, including you, who could've processed same-sex      10    marriage applications, correct?</p> <p>11       MS. KEMP: Can -- can you clarify? You said that      12    office. Are you including both offices?</p> <p>13    BY MR. MASTERS: (Resuming)</p> <p>14       Q. In -- in the Circuit and Superior Court.</p> <p>15       A. Correct. But if I gave her a religious      16    accommodation, maybe every other -- eight or the others      17    would file one.</p> <p>18       Q. But they hadn't at that point.</p> <p>19       A. Neither had she until --</p> <p>20       Q. No, no, no, --</p> <p>21       A. -- the day of -- after.</p> <p>22       Q. -- but you didn't have any other requests in your      23    hands or that you had knowledge of besides Linda's, right?</p> <p>24       A. Not at that time.</p> <p>25       Q. Okay. Thank you.</p>

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