

United States Court of Appeals for the Federal Circuit

~~UNDER SEAL (NON-PUBLIC ORDER)~~

IN RE COMPLAINT NO. 23-90015

Before MOORE, *Chief Judge*.

ORDER

By order of March 24, 2023, a special committee composed of Chief Judge Moore, Judge Prost, and Judge Taranto (the Committee) was appointed to investigate and report its findings and recommendations with respect to a complaint identified against Judge Newman. Pursuant to Rule 13(a) of the Rules for Judicial Conduct and Disability Proceedings, the Committee has received new information regarding additional acts of potential misconduct that it has referred to me. Because there is sufficient cause to believe that these new matters constitute misconduct under the Rules and may also be relevant to existing investigations into Judge Newman's mental fitness, it is necessary and appropriate to expand the scope of the investigation to include these new matters.

I

The first new matter relates to Judge Newman's alleged conduct toward her [chambers staff member], [REDACTED] (her [chambers staff member]). On Monday, March 6, 2023, [the Newman chambers staff member] reported to me that Judge Newman had disclosed sensitive medical information about another judge to her staff. Following [Newman chambers staff member]'s report, I spoke with

Judge Newman and her staff to ensure they understood Judge Newman's disclosure was inappropriate and that they should not disclose the confidential information to anyone else.

The Committee has been informed that, following my conversation with Judge Newman and her staff, Judge Newman allegedly took retaliatory action against [her chambers staff member] in response to his protected disclosures. Judge Newman instructed her staff to no longer include [her chambers staff member] in chambers' communications, including work-related emails. Judge Newman also altered the scope of [her chambers staff member]'s duties. For example, the Committee has been informed that prior to Judge Newman's directive, [her chambers staff member] was regularly included on all chambers-related communications and that reviewing those communications was a routine part of his job responsibilities. It has been reported that Judge Newman's actions negatively and materially impacted the nature and scope of his work.

The Committee has also been made aware of additional potential acts of retaliation. [Judge Newman's chambers staff member] contacted [REDACTED], the Court's Director of Workplace Relations, seeking informal resolution of a workplace dispute regarding his complaint that [REDACTED], Judge Newman's [employee], was inappropriately contacting him outside of regular business hours to perform work-related and personal tasks. As detailed in the April 6, 2023 Order, I emailed Judge Newman on April 4, 2023 to inform her of [her chambers staff member]'s concerns, to ensure Judge Newman would take appropriate action to address those concerns, and to remind her that [her chambers staff

member] should suffer no adverse consequences for having come forward. To date, I have not received a response from Judge Newman confirming she has taken any steps to address [her chambers staff member]'s concerns. In fact, as detailed in the April 6, 2023 Order, Judge Newman's only response was an email to 95 court employees disclosing [her chambers staff member]'s confidential complaint in which she stated her concerns about her own case assignments were more significant than [her chambers staff member]'s complaint.

Due to Judge Newman's failure to take corrective actions, I spoke to [Judge Newman's employee] about [her chambers staff member]'s concerns on April 10, 2023. [The Court's Director of Workplace Relations] also participated in that conversation. [Judge Newman's employee] asked to record the conversation, which we allowed. [Judge Newman's employee] claimed that she had not been informed about the EDR matter. We explained to her the concerns about late night calls and text messages and asked if she would agree to refrain from calls and texts to [the chambers staff member] outside of business hours (8-6). [The Court's Director of Workplace Relations] explained to her that emails related to work could be sent at any time. During the conversation, [Judge Newman's employee] refused to agree to refrain from calling and texting [the chambers staff member] outside of business hours and requested more time to consider whether she would cease to call and text him outside of business hours. I asked [Judge Newman's employee] if she would at least agree, while she was considering the matter, to refrain from contacting [the chambers staff member] in the middle of the night for a short period. She refused to agree to even that short-term resolution. Judge Newman is aware of these EDR concerns and to date,

[Judge Newman's employee] has refused to agree not to contact [the chambers staff member] outside of normal business hours.

On April 13, 2023, [Judge Newman's chambers staff member] filed a formal request for Assisted Resolution with [the Court's Director of Workplace Relations] concerning his claims that he had suffered abusive conduct and retaliation for his protected disclosures. [Judge Newman's chambers staff member] sought interim relief in the form of an alternative work arrangement while those claims were being investigated. After reviewing [Judge Newman's chambers staff member]'s request, and in consultation with [the Court's Director of Workplace Relations], I found it appropriate to grant [Judge Newman's chambers staff member]'s request for interim relief as permitted by the Court's Employment Dispute Resolution (EDR) Plan. Accordingly, I ordered that [Judge Newman's chambers staff member]'s workstation be moved outside of Judge Newman's chambers until further notice and that Judge Newman's staff should not contact [Judge Newman's chambers staff member] outside of business hours. The interim relief did not prevent Judge Newman from contacting [her staff member] at any time for any matter. I also informed Judge Newman that, apart from relocation of his workstation, [Judge Newman's chambers staff member] would continue to perform his current job duties. I informed Judge Newman of the interim relief via email on April 14, 2023, as shown below:

[The Court's Director of Workplace Relations] followed up by email to Judge Newman on April 18, 2023, indicating that she was available to assist in resolving this matter and would welcome the opportunity to speak with Judge Newman about [her chambers staff member]'s concerns. Judge Newman did not respond to either email.

To date, Judge Newman has not responded to the Court's Director of Workplace Relations [REDACTED] or to the Chief Judge about either the April 13, 2023 EDR matter or the separate EDR matter discussed in the April 6, 2023 Order. Our EDR policy requires that "[a]ll Judges, Employing Offices, and Employees have a responsibility to

From: Chief Judge Kimberly A. Moore [REDACTED]
Sent: Friday, April 14, 2023 2:30 PM
To: Judge Pauline Newman [REDACTED]
Cc: [REDACTED]
Subject: EDR MATTER

Judge Newman,

Our Director of Workplace Relations, [REDACTED] has received a request for Assisted Resolution from [REDACTED] that pertains to claims that include abusive conduct and retaliation for protected disclosures. Pursuant to the Employment Dispute Resolution Plan (attached), [REDACTED] has requested interim relief, in the form of an alternative work arrangement while these allegations are being investigated. Based on the information currently available to me, I find it appropriate to grant interim relief as follows: until further notice, [REDACTED] workstation will be moved outside of chambers. He will continue to perform his current job duties. However, any communication from employees of Judge Newman's chambers other than Judge Newman should be made to [REDACTED] only during regular business hours and only via the court's email system or Microsoft Teams. I hope that you will work with the court team as they investigate and attempt to resolve these issues. Please remember that this request and all information related to it should be treated as confidential. You may not even share it with your staff except to tell them about the new manner in which to contact [REDACTED]

Chief Judge Kimberly Moore

The Honorable Kimberly A. Moore
Chief Judge
U.S. Court of Appeals for the Federal Circuit

promote workplace civility, prevent harassment or abusive conduct, and to take appropriate action upon receipt of reliable information indicating a likelihood of wrongful conduct under th[e] Plan.” No cooperation from Judge Newman or [Judge Newman’s employee] on either matter has occurred. The information provided to the Committee suggests Judge Newman has not taken any steps to fulfill her duty to resolve [her chambers staff member]’s concerns.

On April 19, 2023, the Committee was informed that at 9:30 am, directly contrary to the interim relief [Judge Newman’s chambers staff member] requested and ordered pursuant to the EDR process, Judge Newman demanded [her chambers staff member] return to his workstation in her chambers by 11:00 am and that if he failed to do so she would construe his failure as an immediate resignation.

The Committee has also been informed that Judge Newman has made inappropriate and unprofessional statements to other court staff regarding [her chambers staff member]. Specifically, on April 18, 2023, Judge Newman expressed frustration over [her chambers staff member] answering the chambers phone lines including her phone line, which had at all times been part of his normal job duties. She then informed the IT Staff of her intention to have [her chambers staff member] removed from the building and arrested. Judge Newman ended the conversation by threatening litigation at the Supreme Court and suggesting that all of this would be on the front page of the Washington Post.

Based on the information presented to the Committee, there is probable cause to believe that Judge Newman’s retaliatory statements and conduct toward and about [her chambers staff member]—including (1) taking

retaliatory action in response to [her chambers staff member]’s protected disclosures; (2) failing to personally cooperate, or to ensure [Judge Newman’s employee]’s cooperation, in resolving [her chambers staff member]’s EDR matter; (3) threatening to have [her chambers staff member] removed and arrested; and (4) demanding that [her chambers staff member] return to chambers in contravention of the ordered interim relief—have negatively and materially impacted the nature and scope of [Judge Newman’s chambers staff member]’s employment and may constitute misconduct. This information may also be relevant to the Committee’s existing investigation into Judge Newman’s mental fitness.

II

The second new matter brought to the Committee’s attention relates to Judge Newman’s alleged conduct toward one of her law clerks (Law Clerk). It has been reported to the Committee that after the Judicial Conduct and Disability proceeding against Judge Newman was initiated, Judge Newman tasked her law clerks to work on her defense. Law Clerk communicated to Judge Newman that Law Clerk was uncomfortable participating in her defense because it is a personal matter outside the scope of a clerk’s duties. Law Clerk informed the Committee that Law Clerk felt it was necessary to telework to avoid the stress and drama in Judge Newman’s chambers.

Law Clerk informed the Committee of the following: He had previously been made aware of the EDR matter involving [Judge Newman’s chambers staff member]. On April 18, 2023, Judge Newman required Law Clerk to participate in an in-person meeting. After learning that the meeting was about [Judge Newman’s chambers staff member], Law Clerk asked not to participate in the meeting and to be loaned to

another chambers. Law Clerk reported that Judge Newman declined and required his participation. During Judge Newman's discussion of [her chambers staff member], Law Clerk again requested to be reassigned to work with a different judge because working in Judge Newman's chambers was impairing Law Clerk's ability to complete case-related work and was harmful to Law Clerk's [REDACTED]. Judge Newman indicated that she would not loan him to another judge because the optics would be damaging to her. Judge Newman informed Law Clerk that his only options were to stay or resign.

Based on the information presented to the Committee, there is probable cause to believe that Judge Newman's has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. This information may also be relevant to the Committee's existing investigation into Judge Newman's mental fitness.

III

The third new matter relates to Judge Newman's alleged conduct towards the Court's IT Department. The IT staff informed the Committee of the following: On April 17, 2023, Judge Newman called the IT Department and accused the Court of deleting her emails and files and monitoring and hacking her computer. She further expressed concern about her phone and that the court was interfering with the mail at her personal residence. When asked to provide more details related to these allegations so that the IT staff could assist in ascertaining whether any electronic devices were compromised, Judge Newman refused because she believed the Court was responsible. IT staff reported that Judge Newman sounded annoyed, agitated, paranoid and upset. Staff further reported that her communications were nonsensical because there was

no basis for the allegations. Judge Newman then made vague threats of litigation. Staff described her as being in attack mode.

The IT staff reported to the Committee that the following events occurred on April 18, 2023:

Judge Newman's staff contacted the IT Department concerned that something was wrong with Judge Newman's phone system. The only thing determined to be wrong with the phone system was that the volume was turned down on Judge Newman's phone. After the volume was turned up, the IT staff called Judge Newman to ensure that she could hear the phone ring. She answered and was able to hear the staff. During that conversation, Judge Newman informed the IT staff that they still needed to fix the phone systems. She then informed the IT staff about her frustration with [her chambers staff member] who was answering the chambers' phones, a regular part of his job. She told the staff that she was going to have [her chambers staff member] removed from the building and arrested. She ended the conversation by threatening litigation at the Supreme Court and suggesting that all of this would be on the front page of the Washington Post. Staff described the call as bizarre and unnecessarily hostile toward [Judge Newman's chambers staff member].

Based on the information presented to the Committee, there is probable cause to believe that Judge Newman has engaged in misconduct and may suffer an impairment of cognitive abilities that renders her unable to function effectively in discharging her duties.

IV

Judicial misconduct is defined as "conduct prejudicial to the effective and expeditious administration

of the business of the courts.” 28 U.S.C. § 351(a). Misconduct includes, but is not limited to, “treating . . . judicial employees . . . in a demonstrably egregious and hostile manner,” “creating a hostile work environment for judicial employees,” retaliating against an employee for exercising his rights under the Court’s EDR plan, and “for reporting or disclosing judicial misconduct.” Rules 4(a)(2)(B) and (C), and 4(a)(4).

In addition, the Code of Conduct for United States Judges (the Code), which is instructive in determining whether a judge’s conduct constitutes judicial misconduct, provides that: (1) “[a] judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary,” Canon 2A of the Code; (2) “[a] judge should diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court personnel,” Canon 3B(1); and (3) “[a] judge should practice civility, by being patient, dignified, respectful, and courteous in dealing with court personnel, including chambers staff. A judge should not engage in any form of harassment of court personnel. A judge should not retaliate against those who report misconduct. A judge should hold court personnel under the judge’s direction to similar standards,” Canon 3B(4).

Based on the information communicated to the Committee by the above mentioned individuals, there is probable cause to believe that Judge Newman’s alleged retaliatory, unprofessional, and abusive behavior towards her own and other court staff may constitute additional misconduct and may also be relevant to matters already

under investigation identified in previous orders, including but not limited to concerns about Judge Newman's mental fitness to discharge the duties of her office. Pursuant to Rules 5, 11, and 13(a), the scope of the investigation is hereby expanded to include an investigation into the newly-identified matters described herein. The clerk shall transmit a copy of this order to Judge Newman. *See* Rule 15(a)(1)(B).

IT IS SO ORDERED.

4/26/23
Date

/s/ Kimberly A. Moore
Kimberly A. Moore
Chief Judge