

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 myself, as presiding officer, 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 Judicial Disability Proceedings, the Committee has received newly discovered information. Because I find there is sufficient cause to believe that the new matter constitutes potential misconduct under the Rules, I have determined it is necessary to expand the scope of the investigation to include this new matter.

I.

The new information arises out of an employment dispute between Judge Newman's [chambers staff member] and her [employee] [REDACTED]. On April 4, 2023, [Newman chambers staff member] came to me in my capacity as Chief Judge seeking informal resolution of a workplace dispute. In particular, [Newman Chambers staff member] complained that [employee] was contacting him outside of regular workplace hours to perform work-related tasks as well as what he viewed as

tasks that were not part of his job duties. After discussing the matter with [Newman chambers staff member], I sent an email to Judge Newman that same day under the subject “[employee]” to make sure Judge Newman was aware of the dispute and to work with her to attempt to resolve the issue informally:

From: Chief Judge Kimberly A. Moore
Sent: Tuesday, April 4, 2023 5:37 PM
To: Judge Pauline Newman
[REDACTED]
Subject: [employee]

Judge Newman,

A concern by a member of your staff has been brought to my attention. I understand that your [employee] [REDACTED] has been contacting your [staff member] in the middle of the night to perform some work-related and some personal tasks for her. I further understand that he has let [employee] know that he does not wish to be contacted outside of business hours except by you in the case of an emergency. It is not clear to me how much you know about these inappropriate contacts so I am calling them to your attention as [employee’s] supervisor to ensure that this uncomfortable situation does not continue. Can you please confirm receipt of this message?

Judge Newman did not send a confirmation email. She did, however, send an email the following day to all judges

and chambers staff on the court about not being assigned a sitting on the June 2023 calendar:

From: Judge Pauline Newman
[REDACTED]

Sent: Wednesday, April 5, 2023 3:46 PM

To: Chief Judge Kimberly A. Moore
[REDACTED]

Cc: -All Judges [REDACTED]

Subject: June Calendar

To Chief Judge Moore,

Yesterday's notice of the June appeal paneling again excludes me from the entire June hearing calendar, despite my request. Please correct this action...

I responded by sending two emails. The first was the following email, addressed only to Judge Newman and the Judicial Council, with regard to the June sitting:

From: Chief Judge Kimberly A. Moore

Sent: Wednesday, April 5, 2023 4:05 PM

To: Judge Pauline Newman
[REDACTED]

Cc: Judge Sharon Prost [REDACTED];

Judge Richard G. Taranto

[REDACTED]; Judge Todd Hughes

[REDACTED]; Judge Timothy B. Dyk

[REDACTED]; Judge Kara Stoll

[REDACTED]; Judge Alan D. Lourie

[REDACTED]; Judge Tiffany P.

Cunningham [REDACTED];
Judge Raymond Chen [REDACTED];
Judge Jimmie Reyna [REDACTED];
Leonard P. Stark [REDACTED];
Subject: RE: June Calendar

Judge Newman,

I am not certain why you would send this email to all law clerks and court staff. Given the sensitive nature of the issues involved, I am sending this response only to the members of the court's judicial council. You have already been informed that the judicial council voted unanimously not to assign you to sit on any new cases pending the results of the investigation into potential disability/misconduct identified in the order which you have been given. As you know, consistent with the rules, a special committee was appointed and that investigation is ongoing. To be clear, you will not be assigned any new cases until these proceedings are resolved.

The following second email was sent only to Judge Newman about the employment dispute matter under the subject line "[employee]":

From: Chief Judge Kimberly A. Moore
Sent: Wednesday, April 5, 2023 4:12:37 PM
To: Judge Pauline Newman
[REDACTED]
Subject: RE: [employee]

Judge Newman,

Since I received an email from you a few minutes ago, I know you are on email. Yet, you did not acknowledge receiving the below email which identifies an EDR matter related to inappropriate conduct by one of your staff towards another [Newman chambers] staff member. Please let me know that you will address the alleged inappropriate conduct by [employee], otherwise I need to do so. I have been advised that I should make certain that you appreciate that [Newman chambers staff member] should suffer no adverse consequences for having come forward.

This court's Employment Dispute Resolution Plan require that "[a]ll individuals involved in the processes under this Plan must protect the confidentiality of the allegations of wrongful conduct" and that "[i]nformation will be shared only to the extent necessary and only with those whose involvement is necessary to address the situation." Despite those requirements, and my clear attempts to maintain confidentiality of the dispute resolution, Judge Newman proceeded to send an email, under the subject "[employee]," to the court's "All Judges" list—which includes all judges, chambers staff, and other judicial employees (95 individuals in all). Judge Newman's email included in full my two emails under the subject "[employee]" immediately after her new message:

From: Judge Pauline Newman
[REDACTED]

Sent: Wednesday, April 5, 2023 7:19:29 PM

To: Chief Judge Kimberly A. Moore
[REDACTED]

Cc: -All Judges [REDACTED]
Subject: Re: [employee]

Judge Moore,

Since you have not responded to my request, I assume you refuse to restore my service as a judge of the court. This is more significant than a phone call to a member of my chambers staff.

Judge Newman

Sent from my iPhone

[Including the above-quoted emails of April 5, 2023, at 4:12 PM, and of April 4, 2023, at 5:37 PM]

II.

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”; and retaliating against complainants, witnesses, judicial employees, or others for participating in this complaint process, or for reporting or disclosing judicial misconduct or disability.” Rule 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 dealings 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 this information, I conclude there is sufficient cause to believe that Judge Newman’s disclosure of a confidential employment dispute matter and statements made in regard to that matter may constitute additional misconduct and may also be relevant to the matters already under investigation identified in the March 24, 2023 order identifying a complaint related to inappropriate behavior, inappropriate disclosure of confidential or sensitive information, and concerns about mental fitness to perform the work of an active judge. I accordingly expand the scope of the investigation to include an investigation into this newly-identified matter. Pursuant to Rule 15(a)(1)(B), the clerk shall transmit a copy of this order to Judge Newman.

IT IS SO ORDERED.

4/6/23

Date

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