

 New Civil Liberties Alliance

September 19, 2023

The Honorable Kimberly A. Moore
Chair of the Special Committee of the
Judicial Council for the Federal Circuit
U.S. Court of Appeals for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

VIA EMAIL

Re: In re Complaint No. 23-90015 (Complaint Against Circuit Judge Pauline Newman)

Dear Judge Moore:

This Letter responds to the Special Committee’s Order of September 18, 2023.¹

The Order makes several incorrect factual claims. First, the Order states that Judge Newman requested the release of her August 31, 2023 responsive brief to the Special Committee’s Report and Recommendation on September 13, 2023. That is incorrect. As has been her practice throughout these proceedings, Judge Newman requested the release of her brief contemporaneously with filing of that document. *See* Rule 20(a) Response to the Special Committee’s Report and Recommendation (“Response”) at 1, n.1. The September 13 Letter merely reiterated that request. *See* Sept. 13 Letter at 1 (“I write to respectfully *renew* the request for an expeditious public release of Judge Newman’s August 31, 2023 responsive brief to the Special Committee’s Report and Recommendation. This request has been pending for two weeks, with no action.”) (emphasis added, footnote omitted).

Second, the Committee claims that “Judge Newman also informed the Clerk of Court no redactions to the Response were necessary.” Sept. 18 Order at 2. That too is incorrect. Judge Newman’s September 13 Letter “respectfully request[ed] prompt release of Judge Newman’s response *with any appropriate redactions.*” Sept. 13 Letter at 2 (emphasis added). Since the Committee has been in the possession of Judge Newman’s brief for nearly three weeks, it has had plenty of opportunity to identify such redactions. We note that the Committee was able to produce its own 111-page report and redact it in less time.

¹ Pursuant to Rule 23(b)(7), Judge Newman requests that this filing, the Order of September 18, 2023, and any response from the Committee be made publicly available.

Third, the Committee states that Judge Newman “did not include redactions to Exhibit C” when requesting the release of information. Sept. 18 Order at 2. While technically a true statement, the email to the Clerk of Court stated that “Judge Newman consents to the release of unredacted Attachment C, but understands that because it involves internal Court communications, the Committee may not wish it released.” Accordingly, Judge Newman “[e]ft] this matter to the Committee’s discretion.” Sept. 13, 2023 Email from Gregory Dolin to [REDACTED]. Thus, nothing precluded the Committee from redacting such information as it saw fit from that Exhibit.

Nevertheless, in order to expedite the process of publicly releasing Judge Newman’s August 31 brief, we are providing redacted copies of all of the exhibits. In compliance with the Committee’s September 18 Order, this submission includes redacted Exhibit C which removed “names and contact information of court employees,” Sept. 18 Order at 2, but retained the names of judges to whom the pre-assignment memorandum was sent. Because the composition of the panel which decided [REDACTED] is a matter of public record, we do not believe that the redaction of panel members’ names is necessary.

Additionally, and for the completeness of the record, Judge Newman is providing the Committee with Dr. Ted Rothstein’s CV. This item was unavailable to Judge Newman at the time of the brief’s submission as Dr. Rothstein was on vacation and did not have access to the electronic version of this document. We received the document earlier today and are now sharing it with the Committee and the Judicial Council.

Now that the Committee’s requests have been complied with, we hope for and expect an expeditious release of the entirety of Judge Newman’s (appropriately redacted) August 31, 2023 Rule 20(a) response.

Respectfully submitted,
/s/ Gregory Dolin, M.D.
Senior Litigation Counsel
NEW CIVIL LIBERTIES ALLIANCE