

 New Civil Liberties Alliance

June 28, 2024

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:

Enclosed please find Judge Newman's Response to the Committee's May 29, 2024, Show Cause Order. I also respectfully renew the request for an expeditious public release of that Order, Judge Newman's Motion to Reschedule the Oral Argument, the Committee's Order of May 31, 2024, granting-in-part the aforementioned motion, and Judge Newman's letter of June 12, 2024. We also request expeditious release of the attached Response to the Show Cause Order and this cover letter. All of these requests are made pursuant to Rule 23(b)(7) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. As you know, the Commentary to that Rule states that "[o]nce the subject judge has consented to the disclosure of confidential materials related to a complaint, the chief judge ordinarily will refuse consent *only* to the extent necessary to protect the confidentiality interests of the complainant or of witnesses." R. 23. Comm. (emphasis added). As none of these orders mention any witnesses or testimony, there is little reason to refuse to release them. Indeed, it is disappointing that despite *two* requests for release, neither you, nor the Committee has authorized such a release yet—nor even so much as acknowledged the requests.

As you know, when Judge Newman filed her complaint in the District Court, she challenged the Committee's gag orders under the First Amendment. *See Newman v. Moore*, No. 23-cv-01334 (D.D.C.), ECF 1, ¶¶ 57-61 (filed May 10, 2023). Once the Committee granted Judge Newman's Rule 23(b)(7) request, *see* May 16 Special Committee Order, and relying on the Committee's continued commitment to comply with future Rule 23(b)(7) requests, Judge Newman amended her Complaint and dismissed her First Amendment claims, *see Newman v. Moore*, ECF 10 (filed June 27, 2023). We appreciate that over the course of the last year, the Committee (though occasionally with delays) always released documents in these proceedings in response to Judge Newman's requests. We are therefore baffled as to why the latest request has been met with complete silence, and we hope that this can be

ascribed simply to its being overlooked in the press of other business rather than to some other, more problematic cause. We also hope that this letter will prompt you and/or the Committee to act on Judge Newman's requests which have now been pending for 30 days.

In short, we request the expeditious release of the documents discussed in the first paragraph of this letter, and we request that they be released *before* the oral argument in this matter, which is presently scheduled for July 10, 2024. Absent such a release, Judge Newman will be forced to seek relief from the District Court, potentially by seeking to amend her Complaint so as to reinstitute her First Amendment claims which were dismissed earlier solely in reliance on the Committee's continued good faith in expeditiously granting Judge Newman's Rule 23(b)(7) requests. We sincerely hope that such a filing will not become necessary.

We appreciate your timely consideration of this request.

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