

 New Civil Liberties Alliance

September 13, 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:

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.¹ This request has been pending for two weeks, with no action. *See* Rule 20(a) Response to the Special Committee’s Report and Recommendation (“Response”) at 1, n.1.

In filing the Response, Judge Newman assiduously endeavored to avoid naming witnesses by name, or revealing other information that is not yet public. *See, e.g., id.* at 45 (citing “Law Clerk Affidavit” rather than referring to the affiant by name); *id.* at 48-49 (referring to Judge Newman’s paralegal solely by title and not by name); *id.* at 92 (referring to the Special Committee’s medical consultant solely by title). The only instances where Judge Newman’s response refers to matters that have not been previously publicly disclosed are the identification, by name and number, of cases that were allegedly reassigned from her to other judges. *See id.* at 28-29 and 81-83.² Accordingly, there is no just reason to delay the release of Judge Newman’s Response.

We note that the Committee publicly released its own 111-page Report and Recommendation (without awaiting Judge Newman’s response) mere four days after delivering it to Judge Newman. At the same time, the Committee stalled on the requested release of Judge Newman’s 17-page letter brief that was submitted, consistent with the Committee’s directive, on July 5, 2023, for nearly a month. It

¹ Pursuant to Rule 23(b)(7), Judge Newman requests that this filing be made publicly available.

² This information has been previously redacted from the Committee’s own filings; however, some of the information is publicly available as a result of the District Court litigation. In any event, if necessary, Judge Newman consents to the redaction of the case names and numbers.

appears that the Committee is again engaging in stalling tactics. Respectfully, this is inappropriate and inconsistent with due process and the letter and spirit of the Rules for Judicial Conduct and Judicial Disability Proceedings.

Rule 23(b)(7) provides that “[i]f both the subject judge and the chief judge consent in writing, any materials from the files may be disclosed to any person.” Obviously, Judge Newman has consented, and the present delay is occasioned only by the lack of consent from the Chief Judge. However, the commentary to the rules 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, cmt. Neither the rules themselves, nor the commentary, permit the Chief Judge to delay the release of the information to such time as may be advantageous for public relations or other purposes.

Furthermore, the public has a right to access Judge Newman’s response in a timely fashion and form its own conclusions on the soundness of the Special Committee’s Report and Recommendation. Withholding the release of the Response until the Judicial Council issues its final report (or some other time) appears to be an attempt to shift the public’s attention from the Response and arguments made therein to the action of the Judicial Council. This undermines both Judge Newman’s and the public’s rights. For these reasons, it is our view that the unjustified delay the releasing the Response is yet another instance of the Committee’s procedural irregularity and insistence that it play by one set of rules, while Judge Newman is subject to another set. Needless to say, we believe this to be improper and a denial of due process of law.

Accordingly, we respectfully request prompt release of Judge Newman’s response with any appropriate redactions. The Committee need not release any of the attachments, because appropriately redacted reports by Drs. Carney and Rothstein have already been made available to the public.

I appreciate your prompt response to this request.

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