

**United States Court of Appeals for the Federal
Circuit**

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

IN RE COMPLAINT NO. 23-90015

Order of the Judicial Council of the Federal Circuit

September 20, 2023

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Before the Judicial Council of the Federal Circuit

PER CURIAM.

ORDER

Summary

Judge Pauline Newman is 96 years old and has served with distinction as an active judge on this Court for 39 years. She has been a highly valued and respected colleague, and her many contributions to the Court, to the patent system, and to the law are recognized by all. Her colleagues on this Court have recently paid tribute to Judge Newman as “the heroine of the patent system”¹ and “the most beloved colleague on our court.”²

Unfortunately, earlier this year mounting evidence raised increasing doubts about whether Judge Newman is still fit to perform the duties of her office. When such evidence is brought to the attention of the Chief Judge and the Judicial Council, there is an obligation to investigate the matter under the procedures established by the Judicial

¹ The Honorable Kimberly A. Moore, *Anniversaries and Observations*, 50.4 AIPLA Q. J. 515, 524 (2022).

² The Honorable Raymond Chen, *Tribute to Judge Pauline Newman*, 74 N.Y.U. Ann. Surv. Am. L. 3, 3 (2018).

Conduct and Disability Act of 1980 (Act)—the self-policing mechanism Congress created to address (among other things) judges who may no longer be fit for judicial office. Failing to act under the circumstances here would breach our obligations under the Act, display disregard for the rights of litigants bringing their cases before this Court, ignore the rights of court staff to be free from increasingly dysfunctional behavior in the workplace, and undermine public confidence in the judiciary.

These are very sad proceedings for all involved. Judge Newman and her counsel have aggressively sought to discredit this entire process by trying their case in the press while conjuring a narrative of “hostile,” “disrespect[ful],” and “appalling” treatment marked by exercises of “raw power,” all borne out of “personal animosity” toward Judge Newman. August 31 Response (Response) 1, 20 n.16, 53. There is no evidence to support these claims. From the outset, the Chief Judge and other members of the Court approached Judge Newman in a respectful manner to attempt to address a difficult situation with concern for a valued colleague hoping for an informal resolution that would have avoided this process. *See* March 24 Order at 2; Ex. 1 (emails between Chief Judge Moore and Judge Newman). Multiple colleagues attempted to speak to Judge Newman about her fitness. She refused to speak to them at all or quickly terminated an attempt to discuss the issue. The Chief Judge shared a draft complaint with Judge Newman detailing some of the concerns that had been raised and sought to meet with her. Ex. 1. Judge Newman refused multiple requests for a meeting.

This matter became a formal proceeding because Judge Newman left no other option. The Court and all of its staff have been trying to work with and support Judge Newman. But sadly the circumstances became such that these proceedings could no longer be avoided given our obligations.

On March 24, 2023, the Chief Judge, pursuant to the Act and its implementing rules, identified a Complaint and appointed a Special Committee (Committee) to investigate information indicating that Judge Newman may no longer be able to perform the functions of her office. The investigation began promptly. And it soon bore out the essential allegations in the Complaint regarding Judge Newman's cognitive state.

The investigation included more than 20 interviews with court staff. Those interviews, along with numerous emails sent by Judge Newman, provided overwhelming evidence that Judge Newman may be experiencing significant mental problems including memory loss, lack of comprehension, confusion, and an inability to perform basic tasks that she previously was able to perform with ease. The evidence revealed instances in which, when Judge Newman struggled with basic tasks, she became frustrated, agitated, belligerent, and hostile towards court staff. The staff report that the behaviors suggesting that Judge Newman may have a disability emerged over two years and have increased in frequency and severity. With no rational reason—other than frustration over her own confusion—Judge Newman has threatened to have staff arrested, forcibly removed from the building, and fired. She accused staff of trickery, deceit, acting as her adversary, stealing her computer, stealing her files, and depriving her of secretarial support. Staff have described Judge Newman in their interactions with her as “aggressive, angry, combative, and intimidating”; “bizarre and unnecessarily hostile”; making “personal accusations”; “agitated, belligerent, and demonstratively angry”; and “ranting, rambling, and paranoid.” Indeed, interactions with Judge Newman have become so dysfunctional that the Clerk of the Court has advised staff to avoid interacting with her in person or, when they must, to bring a co-worker with them. This behavior has taken a significant toll on court staff.

These reports are not of isolated incidents based on a few interactions with only one or two staffers. They come from interactions with staff members across a broad range of departments from the Clerk's Office to Information Technology (IT) to Human Resources (HR) to the General Counsel's Office to Judge Newman's own chambers staff. During this investigation two of Judge Newman's five chambers' staff members resigned and requested no further contact with her. One twice asked for assistance under the Court's Employment Dispute Resolution program (EDR), but Judge Newman repeatedly refused to participate in the EDR processes. A third, on advice of counsel, invoked the Fifth Amendment's privilege against self-incrimination and refused to answer even the most basic questions about what goes on in Judge Newman's chambers, about her responsibilities, or about Judge Newman's mental fitness.

The evidence from staff is essentially undisputed. And the concerns about disability it supports are confirmed by evidence regarding Judge Newman's workload and productivity. Judge Newman acquiesced in several significant reductions in her workload starting in 2021. Despite the reduced workload, data from the Clerk's Office shows that, over the last two years or so, she has taken four times as long to issue half the number of opinions as her colleagues.

The Committee's investigation culminated in an order on May 16 directing Judge Newman to undergo two medical examinations, directing her to provide to one of the examiners specified medical records of relevance to assessing disability, and requesting that she sit for an interview with the Committee. The two medical examinations were to be performed by independent medical providers: a 30-45-minute interview with a neurologist, with no required invasive procedures; and a full neuro-psychological examination that would involve approximately six hours of cognitive testing. As was explained to Judge Newman, this

testing was recommended by the Committee's medical consultant, who has been retained by other courts in similar circumstances, and who was recommended to the Committee by the Administrative Office of the U.S. Courts.

Despite the large amount of very troubling evidence, Judge Newman refused to comply with the Committee's order. The total burden of compliance would be an appointment with a neurologist for no more than 30-45-minutes, a full neuro-psychological examinations lasting about six hours, and an interview that might explore the evidence that is so troubling. The burden is small, the basis for concern about disability very substantial, and the job at issue of great public importance. Yet Judge Newman refused.

The issue now before the Council is: *Did Judge Newman commit misconduct in refusing to follow the May 16 Order, which ordered medical examinations, the production of medical records and requested an interview?* We answer in the affirmative. The evidence raising concerns about disability, just summarized, amply justified issuance of the Order. The effect of Judge Newman's refusal to comply with the Order was to thwart this Council's ability to determine whether Judge Newman has a disability that renders her unable to perform the duties of her important office. An unjustified thwarting of a key part of the investigation into disability is recognized under the Act as misconduct. That is what occurred here.

We find no merit in Judge Newman's arguments for why the Council should not draw that conclusion.

First, Judge Newman argues that this matter should have been (and still should be) transferred to another circuit—and that the denial of her transfer request justifies her refusal to comply with the May 16 Order. Yet Judge Newman fails to recognize that transfer is appropriate only in "exceptional circumstances." *See* Rule 26. And here, the Council concludes that no circumstances have warranted,

or currently warrant, taking this step, which would be extraordinary in the context of this disability proceeding.

In support of transfer, Judge Newman argues that the members of this Council have personal knowledge of disputed evidentiary facts concerning this proceeding—and thus are biased. Setting aside the Council’s disagreement with her accusations of improper bias, Judge Newman fails to appreciate both what is currently at issue and what due process requires of adjudicators in this context. Since June 1, 2023, the investigation has centered on whether Judge Newman’s refusal to comply with the May 16 Order constituted misconduct. Although members of the Council inevitably have personal experiences with Judge Newman, the Committee did not rely on and the Council is not relying on those experiences. In particular, no judge has been a witness, and the evidence supporting the May 16 Order and its enforcement, which is at issue now, in no way depends on testimony from fellow judges. And to the extent Judge Newman maintains that the members of this Council cannot be impartial because they know and have worked with her, the argument sweeps too broadly. As a general matter, due process in this context does not require that adjudicators be totally ignorant concerning background information involving parties. And, as it pertains to the Act specifically, the rules explicitly contemplate that circuit judges will institute, investigate, and ultimately decide disability proceedings concerning one of their colleagues.

Judge Newman cites no example of transferring a disability proceeding concerning a circuit judge. Instead, her examples of prior transfers all involve a circuit judge’s discrete alleged acts of past behavior that were charged as misconduct. This is an important distinction: unlike discrete acts of past misconduct, which could potentially be pursued from afar without serious detriment, this case has involved ongoing behavior that was having ongoing effects

on the functioning of court staff and the functioning of this court. Ready access to the Committee was therefore vitally important to ensure that all relevant information was captured and timely reported—all in an environment that ensured affected staff that they were being heard. Indeed, by the time Judge Newman first requested transfer—on April 21, 2023—the Committee had already conducted more than a dozen interviews and a deposition, two of her staff had resigned just days earlier, and many troubling events were occurring in real-time. Given these and other considerations discussed in more detail in this order, granting Judge Newman’s transfer request was never a sound course.

Judge Newman has not shown—nor do we see—exceptional circumstances in this case that have warranted, or currently warrant, transfer. Indeed, relevant considerations—*e.g.*, avoiding delay, preserving superior investigative ability, and the need to timely accommodate court staff in view of Judge Newman’s ongoing behavior—all weighed strongly against transfer (and certainly against finding the requisite exceptionality).

Second, Judge Newman claims that the process was unfair because she was never given an opportunity to contest the information provided by court staff. Judge Newman was given an opportunity to dispute the employee statements. She did not take it. After being provided copies of all affidavits and the deposition transcript considered by the Committee, Judge Newman made the strategic choice not to “delv[e] into the minutia of these affidavits.” July 5 Br. at 15. Instead, she chose to dismiss them as reflecting “petty grievances” and to argue that “even assuming” the information in them was true, it “doesn’t even approach probable cause to believe that Judge Newman is mentally and/or physically disabled.” *Id.* Indeed, Judge Newman expressly agreed that there was no need for an evidentiary hearing in this matter. June 15 Letter at 3. In

addition, the Committee advised Judge Newman that it sought an interview with her so that she could provide the Committee information from her perspective, “including correcting any error of fact” in the Committee’s orders. May 16 Order at 23–24. She refused that opportunity as well. She now adds that, even if the staff statements are true, there is nothing wrong with how she treated staff and she can “run her chambers as she sees fit.” Response 48.

Third, Judge Newman has submitted two medical reports from providers of her choosing and claims that these reports should put to rest any question about her mental fitness. The reports from Judge Newman’s own selected providers, however, are not remotely an adequate substitute for the thorough medical examinations ordered by the Committee based on the recommendations of the Committee’s consultant.

The first consists of a report largely based on administration of a Montreal Cognitive Assessment (MOCA), a one-page test that takes about 10 minutes to administer. The report on its face showed inconsistencies between Judge Newman’s reported score and the stated fact that she was unable to write (due to a broken wrist), which would have prevented her from completing three parts of the test. Properly scored and converted to the scale for a full test, it appears that Judge Newman scored *below the normal range* on that test. And a declaration provided by the physician who administered that test does not dispute that assessment.

The second report is based in part on a different 11-minute cognitive exam, the Modified Mini-Mental State (3MS), that tests such things as whether Judge Newman can point to her chin, knows the year, and can name a few four-legged animals. It does not remotely provide good cause for Judge Newman refusing to take the full neuropsychological examination (six hours) requested by the

Committee. The manual for the 3MS test expressly indicates that the test was not designed as a screening tool for dementia and is not sensitive enough to detect dementia in early stages. Ex. 2 at 2 (Manual for the Administration and Scoring of the Modified Mini-Mental State (3MS) Test)

The nature and importance of the job of an active judge, and the overwhelming evidence of behavior by Judge Newman indicating a cognitive decline, requires the more thorough and sensitive full neuro-psychological examination ordered by the Committee.

Finally, Judge Newman attacks the May 16 Order by pointing to earlier orders and actions and seeks to paint a portrait of hostility and bad faith on the part of the Chief Judge and the Committee. The Council has examined the specifics of this redirection of focus away from the May 16 Order. We reject the specific allegations and the overall portrait. The sad, difficult proceedings have been conducted from the outset responsibly and in good faith. The May 16 Order was proper and sound, and Judge Newman was required to comply with it.

The Judicial Council unanimously concludes that Judge Newman's refusal to comply with the special Committee's May 16 Order constitutes serious misconduct which warrants a one-year suspension from cases. We are acutely aware that this is not a fitting capstone to Judge Newman's exemplary and storied career. We all would prefer a different outcome for our friend and colleague. However, we have a solemn obligation under the Act and an obligation to the litigants before our Court and court staff to take action—and not to simply look the other way—when it appears that a judge of this Court is no longer capable of performing the duties of her judicial office. Maintaining public confidence in the judiciary demands no less. And that duty constrains us in this case. Judge Newman can obviate the suspension at any time by complying with

the Committee's May 16 Order and permitting the Committee to conclude its investigation into her fitness.

I. Procedural Background and Course of the Investigation

On March 24, 2023, Chief Judge Moore entered an order pursuant to Rule 5(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings identifying a complaint concerning Judge Newman based on information providing probable cause to believe that Judge Newman “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts’ and/or ‘is unable to discharge all the duties of office by reason of mental or physical disability.” March 24 Order at 1 (quoting 28 U.S.C. § 351(a)). The order referred to her having suffered a heart attack in June 2021, requiring hospital care, and a fainting incident in May 2022, and it noted that Judge Newman’s workload had been reduced through several measures, including no longer having to sit on motions panels. *Id.*

As the basis for finding probable cause, the order noted that judges and court staff had provided information raising concerns (i) that Judge Newman was responsible for extensive delays in resolving cases and appeared unable to complete her opinions in a timely fashion (despite her reduced workload), and (ii) that Judge Newman appeared to suffer from “impairment of cognitive abilities (*i.e.*, attention, focus, confusion and memory).” *Id.* at 2. The Order further recounted that, after receiving initial information, the Chief Judge had conducted a limited inquiry pursuant to Rule 5 that provided substantial additional information supporting the finding of probable cause. *See id.* Over four pages, the Order recounted additional details concerning Judge Newman’s exceptional delays in resolving cases and information from staff describing behavior that raised concerns about Judge Newman’s cognitive state, including

allegations of “inappropriate behavior in managing staff.” *See id.* at 2-5.

The March 24 Order also recounted that the Chief Judge had sought to pursue an “informal resolution” with Judge Newman pursuant to Rule 5. The Chief Judge met with Judge Newman and explained the concerns that had been raised about Judge Newman’s delays in resolving cases and her mental fitness. On March 17, the Chief Judge provided Judge Newman a copy of the order identifying a complaint that would be issued if an informal resolution could not be reached. Judge Newman refused multiple requests to discuss the matter or the draft complaint with the Chief Judge. Ex. 1. Left with no other choice, the Chief Judge issued the order identifying a complaint on March 24, 2023.

In a separate order entered on March 24, 2023, pursuant to Rule 11, the Chief Judge appointed a Special Committee (Committee) to investigate the complaint and prepare a report and recommendation for the Judicial Council.³

The Committee immediately began interviewing court staff to gather information. In addition, pursuant to Rule 13(a) & (c), the Committee retained the services of Dr. [REDACTED] [REDACTED] as an expert consultant. Dr. [REDACTED] has served as a consultant on judicial disability proceedings in other circuits and has been relied upon in the Colorado

³ Pursuant to Rule 12(a) and 28 U.S.C. §§ 353(a)(1) & 363, the Chief Judge was required to make herself a member of the Committee. In addition, she appointed Judges Prost and Taranto.

Supreme Court's attorney disciplinary body as a medical expert.⁴

On April 7,⁵ after the Committee had conducted multiple interviews with court staff and consulted with Dr. [REDACTED], the Committee issued an order determining that it was necessary for the Committee's investigation to have Judge Newman undergo a neurological examination and full neuro-psychological testing to determine whether she suffered from a disability. Dr. [REDACTED] had advised that these examinations were necessary to ascertain with a reasonable certainty whether a disability existed. As the April 7 Order recounted, Dr. [REDACTED] had identified a qualified neurologist and neuropsychologist to perform the examinations on an expedited basis. The order provided the names of these specialists. It also noted that "Dr. [REDACTED] is also available to speak to Judge Newman to answer any questions about the nature of the examination and testing" and provided Dr. [REDACTED]'s telephone number. April 7 Order at 2. The order cautioned that refusal to comply without good cause shown could result in the investigation being expanded to consider whether failure to cooperate constituted misconduct under Rule 4(a)(5). *Id.* at 2-3.

Judge Newman failed to respond to the April 7 Order (or to request an extension of time to respond). On April 13, pursuant to Rule 13(a) at the Committee's request, the scope of the investigation was expanded to include whether

⁴ Dr. [REDACTED]'s qualifications are set out in the R&R. *See* R&R 12, 58–59.

⁵ On April 6, an order was entered expanding the scope of the investigation to address an incident in which Judge Newman had apparently violated the confidentiality provisions of the EDR plan. That incident is discussed, as relevant, below.

Judge Newman's failure to cooperate constituted misconduct.

On April 17, the Committee issued an order seeking certain medical records and an interview with Judge Newman. Dr. ██████ had advised the Committee that Judge Newman's medical records related to an alleged cardiac incident and an episode of fainting could shed light on a condition relevant to assessing her cognitive state. Accordingly, the order required Judge Newman to provide medical records related to the health incidents described in the March 24 Order (*i.e.*, what the March 24 Order described as a heart attack and an incident of fainting). April 17 Order at 1. The order also required Judge Newman to provide records "of any treatment or consultation in the last two years regarding attention, focus, confusion, memory loss, fatigue or stamina." *Id.* at 2. Finally, the order requested that Judge Newman sit with the Committee for a videotaped interview. *Id.* The order proposed that Judge Newman should provide the medical records by May 5, 2023, and inform the Committee by April 21 whether she would supply the medical records and sit for an interview or else "provide good cause why an extension of time is needed to respond to this [o]rder." April 17 Order at 2.⁶

On April 21, 2023, counsel for Judge Newman filed a letter brief (April 21 Letter) suggesting that Judge Newman might be willing to cooperate with the Committee's orders but insisting that the Committee first address a

⁶ On April 20, an order was entered expanding the scope of the investigation to include whether three additional incidents constituted misconduct by Judge Newman. Those incidents are discussed, as relevant, below.

request by Judge Newman to transfer this proceeding to another circuit. April 21 Letter at 3.⁷

On May 3, the Committee issued an order responding to the April 21 Letter. (May 3 Order). The order declined the transfer request, explaining that, under the Rules, a discretionary transfer may be considered only in “exceptional circumstances,” *id.* at 10 (quoting Rule 26). The order responded to Judge Newman’s assertion that judges on the Committee and the Judicial Council “likely” would become witnesses by pointing out that such a concern was premature. The result of the medical examinations would likely determine the course of the investigation and need for other evidence. Accordingly, the order denied the request without prejudice to renewing it after Judge Newman had complied with the Committee’s orders regarding medical examinations and medical records. *Id.* at 12–14.⁸

The May 3 Order also renewed the Committee’s orders regarding medical examinations and medical records. It detailed additional information establishing a reasonable basis for those orders and set a deadline of May 10 for Judge Newman to indicate whether she would comply.

⁷ The April 21 Letter also raised a matter outside the purview of the Committee. On March 8, 2023, the Judicial Council had voted unanimously to preclude the assignment of new cases to Judge Newman. In her April 21 Letter, Judge Newman challenged that action as unlawful.

⁸ The Committee had also referred Judge Newman’s request for a transfer to the Judicial Council, which issued its own order denying the request without prejudice to renewal after Judge Newman complies with the Committee’s orders regarding medical examinations, medical records and an interview. May 3 Judicial Council Order.

On May 10, 2023, Judge Newman objected to the Committee’s May 3 Order.⁹ *See* May 10 Letter. With respect to the medical examinations, Judge Newman raised three concerns. First, she argued that she should be permitted to choose the professionals who would conduct any examinations. Second, although the Committee had made Dr. ██████ “available to speak to Judge Newman to answer any questions about the nature of the examination and testing,” April 7 Order at 2, Judge Newman—without contacting Dr. ██████—complained that the testing was of “unknown duration and scope.” May 10 Letter at 4. Third, Judge Newman objected to the lack of any defined limitation on the use of the examination results. *Id.* As for the medical records, Judge Newman argued that they were irrelevant. *Id.* at 3–4. The May 10 Letter also reiterated Judge Newman’s request that the proceeding be transferred to another circuit.¹⁰

On May 16, 2023, the Committee issued an order responding to Judge Newman’s objections. (May 16 Order). The order clarified that the medical examinations would be non-invasive and would consist of an in-person examination by a neurologist lasting 30-45 minutes and a full battery of neuro-psychological testing with a neuropsychologist, which would involve an interview and tests involving answering questions and performing tasks “designed to test all major areas of neurocognitive functioning.” May 16 Order at 21–22. That testing could take up to six hours. The Committee agreed that, if the neurologist

⁹ Judge Newman also filed a complaint in federal district court against the members of the Committee and the entire Judicial Council. *See Newman v. Moore*, No. 1:23-cv-01334-CRC, Dkt. 1 (D.D.C. May 10, 2023).

¹⁰ It also repeated her request that the Judicial Council immediately restore her to the rotation for new case assignments. *See supra* n.7.

believed that any additional tests were required, “such testing can be the subject of further discussion between the Committee and Judge Newman after th[e] initial examination has taken place.” *Id.* at 22. The Committee explained that the results would be used solely to aid the Committee in its determination of whether Judge Newman has a disability and for the preparation of its report and recommendation to the Judicial Council. *Id.* at 23.

With respect to medical records, the May 16 Order “more clearly define[d] [the] requests for medical records.” May 16 Order at 2. In addition to records related to any treatment concerning “mental acuity, attention, focus, confusion, memory loss, fatigue, or stamina,” the Committee explained that it sought records “that relate to Judge Newman’s alleged cardiac issues and fainting episode.” *Id.* at 4. The order explained that the Committee’s consultant, Dr. ██████, had advised that “medical records related to a cardiac event and a fainting episode . . . may very well shed light on the observed changes in Judge Newman’s behavior.” *Id.* at 5. To address privacy concerns, the Committee clarified that the medical records could be provided solely to the neurologist who would evaluate Judge Newman and not to the Committee. *Id.* at 6.

The May 16 Order detailed the information providing a reasonable basis for concern about Judge Newman’s cognitive state. It also explained that the Committee sought an interview with Judge Newman in part to provide her an opportunity to provide information, “including correcting any error of fact” in the Committee’s orders and to “clarify these matters.” *Id.* at 23–24.

The Committee concluded the May 16 Order by: (1) requiring (for the third time) that Judge Newman undergo the required medical examinations; (2) requiring (for the third time) that she produce the medical records; and (3)

requesting (for the second time) that she sit for an interview with the Committee. *Id.* at 25.

On May 25, 2023, Judge Newman refused to comply with the May 16 Order (May 25 Letter).

On May 26, at the request of the Committee pursuant to Rule 13(a), the scope of the investigation was expanded to include whether Judge Newman's refusal to cooperate with the May 16 Order constituted misconduct.

On June 1, the Committee determined that Judge Newman's refusal to comply with the Committee's order impaired the Committee's ability to make an informed assessment of whether Judge Newman suffers from a disability. *See* June 1 Order at 2–3. Accordingly, the Committee narrowed the focus of its investigation to address the question whether Judge Newman's refusal to cooperate with the Committee's order constituted misconduct. *Id.* at 3–4. Given that narrowed focus, the Committee determined, and Judge Newman agreed, that no evidentiary hearing under Rule 14 would be required because the misconduct issue could be determined based on the paper record showing Judge Newman's responses to the Committee's order and because there were no percipient fact witnesses with relevant evidence on that issue. *See* June 1 Order at 4-5; June 15 Letter at 3 (“We agree with this assessment.”).¹¹

¹¹ On June 5, the Judicial Council, treating Judge Newman's requests that she be restored to the rotation of new case assignments, *see supra* nn.7, 10, as a request for reconsideration of the Council's March 8 order, issued an order considering *de novo* whether Judge Newman should be suspended from new case assignments. The Judicial Council explained under its authority under 28 U.S.C. § 332(d), it was suspending Judge Newman from new case

The June 1 Order required Judge Newman to submit a brief, limited to the misconduct issue, by July 5, and set oral argument for July 13. To ensure that Judge Newman could challenge the reasonable basis for the Committee's order, the Committee also provided Judge Newman all of the witness affidavits and the single deposition transcript on which the Committee had relied. June 1 Order at 5.

Judge Newman thereby had the opportunity to respond to all the material the Committee had in its possession supporting the Committee's order.

Judge Newman submitted her brief on July 5 along with medical evidence, and on July 13 the Committee heard argument. Judge Newman's July 5 Brief expressly requested, pursuant to Rule 23(b)(7) "the public release of this letter and any Order or communication issued in response thereto." July 5 Br. at 1 n.1.

On July 31, 2023, the Committee issued its Report & Recommendation (R&R) and, pursuant to Judge Newman's request, publicly released it (with appropriate redactions to protect the privacy of witnesses).

II. The R&R Sets Out Overwhelming Evidence that Provided a Reasonable Basis for the Committee's May 16 Order

The Committee's investigation uncovered overwhelming evidence of behavior by Judge Newman that provided a reasonable basis for concluding that she may suffer from a disability that renders her unable to discharge the duties

assignments based on her lengthy delays in issuing opinions. It was "concerned that assigning additional cases to Judge Newman now will only interfere with her ability to clear her current backlog and exacerbate delays in her already long-delayed opinions." June 5 Judicial Council Order at 4.

of her office. We find that the Committee was justified in issuing its May 16 Order concerning medical examinations, medical records, and an interview.

A. The Evidence of Troubling Behavior in Interactions with Staff Provided a Sufficient and Independent Basis for the May 16 Order

Affidavits prepared after more than 20 interviews with Court staff reflect consistent reports of deeply troubling interactions with Judge Newman that suggest significant mental deterioration including memory loss, confusion, lack of comprehension, paranoia, anger, hostility, and severe agitation. Critically, these reports are not isolated incidents of occasional forgetfulness based on a few interactions with only one or two staffers. To the contrary, they come from interactions with staff members across a broad range of departments from the Clerk’s Office to Information Technology (IT), to Human Resources (HR), to the General Counsel Office, to Judge Newman’s own chambers staff. And contrary to Judge Newman’s assertions, the reports indicate that the behaviors suggesting that Judge Newman may have a disability emerged over two years and increased in frequency and severity. Judge Newman has never specifically disputed any of the staff accounts, many of which are independently substantiated by Judge Newman’s own emails attached as exhibits.

1. Evidence of Memory Loss, Confusion, and Lack of Comprehension

Judge Newman has been having trouble recalling events, conversations, and information just days old and having trouble comprehending basic information that court staff communicate to her. ██████████ Aff. [1] ¶ 10 (“I have on multiple occasion[s] seen Judge Newman have trouble recalling events and information.”); *id.* ¶¶ 11–12 (chambers staff member describing Judge Newman forgetting recent conversations and that “Judge Newman did not recall the

opinion that was issued a day earlier”); ██████████ Aff. [2] ¶¶ 7–11 (“We have to walk her through the same steps over and over and she does not seem to remember them from day to day.”); ██████████ Aff. [3] ¶ 4 (reporting that Judge Newman asked her the same question related to compensation for a temporary employee four separate times by email in an approximately 24-hour period);¹² ██████████ Aff. [4] ¶¶ 37–39 (reporting Judge Newman could not comprehend the location of her files on her computer after five separate emails explaining the matter to her). At times she seems confused and suspicious and to be struggling to comprehend or remember what she is being told. ██████████ Aff. [4] ¶5 (“[I]t appeared to me that from one email to the next Judge Newman either did not read or did not recall the lengthy prior explanations I provided to her.”).

Her judicial assistant, who spoke to her by phone every workday and was present in chambers every workday between approximately December 2021 (when he started in that role) and April 2023 (when he resigned), observed

¹² The HR Director tried repeatedly to work with Judge Newman both to bring back her requested temporary judicial assistant and to post an opening for a new permanent person. ██████████ Aff. [3] ¶ 2; *id.* ¶ 3 (“I had over 20 email and phone call exchanges with Judge Newman over this time trying to get her approval [for temporary and permanent hiring].”). It is clear from the emails that any delay in Judge Newman’s secretarial support was due to her non-responsiveness or confusion. *Id.* ¶ 3 (“It took a long time for Judge Newman to permit me to move forward on both the temporary rehire and the permanent requirement . . . I had to answer the same questions repeatedly and then wait for answers on those same issues to move forward.”); *see also* Ex. 3 (email chain between Judge Newman and HR Director).

Judge Newman’s “memory loss and confusion has increased significantly since [he] started at the court.” ██████████ Aff. [1] ¶¶ 1, 4, 5, 10. The IT Help Desk Manager reported: “Having worked with Judge Newman for years, I have noticed significant deterioration in her memory, confusion, and ability to understand and execute simple tasks over the last year.” ██████████ Aff. [2] ¶ 12. The Director of IT indicated that he has worked with Judge Newman for many years and that, while he was amazed at how quickly and easily she picked things up when she was in her 80s, he noticed a change: “over the last few years, I’ve noticed a significant increase in Judge Newman forgetting how to perform basic tasks that used to be routine for her.” ██████████ Aff. [5] ¶ 2.

Judge Newman’s judicial assistant reported that, in daily telephone calls with her, he would have to repeat information about the status of cases over and over to her and that she would forget whether she had voted on cases or had circulated opinions to the panel for vote. *See* ██████████ Aff. [1] ¶¶ 12–13. In one non-case-related incident, Judge Newman selected pictures of herself from her personal collection for use in a display the library was preparing—yet when these pictures were shown to her the next month, she had no idea where they had come from and even stated that she had never seen them before. *Id.* ¶ 11 (“She seemed to have entirely forgotten about our prior recent meetings.”). In her last three oral argument sittings, she showed up to court without any of the materials she would typically bring to court (such as briefs and bench memos). *Id.* ¶ 23.

In a recent episode, Judge Newman indicated that she was not required to comply with a Court rule that requires a judge to circulate votes on opinions within 5 days of receiving a proposed opinion from the judge assigned the opinion. *See id.* ¶ 22. This rule was unanimously adopted by the Court (including Judge Newman) in March 2018. Judge Newman said that she did not have to comply with

this rule because Chief Judge Markey told her she could take 30 days to vote. *Id.* Chief Judge Markey has been dead for 17 years and has not been a member of the Court for 32 years.

In another instance, Judge Newman was unable to complete the Court's mandatory security awareness training, because she was simply "unable to retain the information" from a 10–20-minute video even after watching it multiple times. ██████ Aff. [5] ¶ 5. The IT Director indicated that Judge Newman repeatedly failed the short multiple-choice test—even though retesting involves presentation of the same multiple-choice questions each time. *Id.* Ultimately, the IT Director watched the video with her and reported that he had to "feed her the answers to the questions in order for her to pass." *Id.*

Staff reported evidence of cognitive problems in various contexts—such as inability to perform simple tasks from one day to the next, even though she performed them independently for years without difficulty. ██████ Aff. [2] ¶ 10 ("Judge Newman was simply not comprehending the simple process for using the application that she used to have no problem handling on her own."); ██████ Aff. [5] ¶ 2; ██████ Aff. [1] ¶ 23. "She never used to have a problem with these routine tasks but now seems to repeatedly forget how to do them." ██████ Aff. [2] ¶ 9; ██████ Aff. [5] ¶ 4 ("she often cannot recall routine steps or processes and we will need to walk her through the entire process and repeat the steps over and over again. These are things like remoting into the system that used to be no problem for Judge Newman until more recently.").

These events do not involve difficulty adapting to new technology, *see* Response 52–53, but rather inability to perform the same tasks that Judge Newman once performed independently with ease and the need to be repeatedly re-instructed on how to complete them. ██████ Aff. [5] ¶¶ 2,4

(“I’ve noticed a significant increase in Judge Newman forgetting how to perform basic tasks that used to be routine for her.”); ██████████ Aff. [2] ¶¶ 7–9, 10 (“She never used to have a problem with these routine tasks” for “processes [that] have not changed” “but now seems to repeatedly forget how to do them.”).

Another Clerk’s Office staff member reported an incident about 16–22 months ago in which he had to assist Judge Newman with walking to the courtroom and where she had to stop and sit outside the robing room to “gather the energy to stand.” ██████████ Aff. [6] ¶ 5. He said that “[s]he seemed lost and confused, like she wasn’t fully there.” *Id.* He also, like other employees, reported having to answer the same questions from her over and over in the same conversation. *Id.* ¶ 3. He indicated that Judge Newman was “suspicious and confused and struggled to comprehend” how an error in calendaring had occurred. *Id.* He explained it to her repeatedly, but she acted “distrustful.” *Id.*

2. Staff Report Evidence of Agitation and Unwarranted Paranoia

Judge Newman has frequently claimed that her email and computer were being hacked—also, at times, that her phones were being bugged—and her complaints recently increased from once or twice a week to almost daily or every other day. *See* ██████████ Aff. [2] ¶¶ 3, 7–10; ██████████ Aff. [1] ¶ 14; ██████████ Aff. [5] ¶¶ 2–4, 6; ██████████ Aff. [7] ¶ 4. Staff described her demeanor when making these complaints as “agitated” and “paranoid” and the conversations as sometimes “bizarre” and “nonsensical.” ██████████ Aff. [7] ¶ 8 (“I would describe Judge Newman’s response as nonsensical because there was no reason to believe any of that was happening.”); *see* ██████████ Aff. [2] ¶ 8 (“She seems agitated and paranoid, and we frequently have to calm her down in order to help her with her problem.”); *see*

also ██████ Aff. [8] ¶ 5 (“I found Judge Newman’s behavior during this whole event to be very bizarre and confusing.”).

In the past, Judge Newman claimed that the culprits who were hacking and bugging her devices were bloggers and the media who were out to get her and bring her down. ██████ Aff. [1] ¶ 14. More recently, she claimed that it is the Court itself hacking, bugging, and deleting information on her devices. ██████ Aff. [2] ¶ 3; ██████ Aff. [7] ¶¶ 4, 8. At one point, she suggested that the Court was interfering with mail at her residence as well. ██████ Aff. [7] ¶ 8.

In each instance, IT staff scanned her devices and found no evidence to justify or support Judge Newman’s concerns. ██████ Aff. [1] ¶ 14 (“ITO would inform me that there were no concerns or IT issues.”); ██████ Aff. [5] ¶ 3 (describing that IT would “scan for malware and viruses, [and] there would be nothing that would suggest any malicious interference with her computer”). Her claims about hackers usually stemmed from her having forgotten where she saved a file or email, and even after the IT staff located the file or email for her (on her desktop or in one of her folders), she sometimes would continue to allege that hackers were responsible for hiding the file. ██████ Aff. [5] ¶ 3 (“Judge Newman routinely blamed her inability to find a file or email on someone ‘hacking’ her computer . . . I would usually be able to find the file she was looking for on a desktop folder or other location where she had forgot she saved it to. Rather than take responsibility for the errors, she would blame hackers or the computer.”); ██████ Aff. [1] ¶ 14 (“She seemed constantly paranoid about this despite no actual basis for her to be concerned.”); ██████ Aff. [2] ¶ 8 (stating Judge Newman’s concerns “seem to be easily explained by . . . forgetting what she was doing or not realizing that the network disconnected her based on inactivity”).

3. Concerns Raised by Events Surrounding Chambers Staff

Recent events surrounding the departure of one of Judge Newman's law clerks and her judicial assistant have raised concerns on multiple fronts, including (1) her inability to remember (or unwillingness to comply with) the Court's EDR process, its confidentiality, and outcomes established in that process, (2) her inability to remember or comprehend repeated explanations given to her about simple staffing and IT matters related to the departure of these employees from her chambers, and (3) her hostile and accusatory interactions with staff based on perceived wrongs that never actually occurred. To summarize, on April 19, 2023, two of Judge Newman's own chambers staff (one law clerk and her judicial assistant) came unsolicited to the Committee to report troubling behavior by Judge Newman, requested assistance from the Committee, and resigned from her chambers. Both expressly requested no further contact with Judge Newman. ██████████ Aff. [9] ¶ 17; Exs. 4 (email from Chief Judge Moore to Judge Newman and chambers staff regarding ██████████ ██████████), 5 (email from Chief Judge Moore to Judge Newman and chambers staff regarding ██████████ ██████████).

The resignation of Judge Newman's judicial assistant was prompted, in part, by Judge Newman's failure to manage a third member of her staff. Judge Newman (1) permitted her career clerk to call her judicial assistant in the middle of the night, including 3:00 am calls to request personal services (such as a 6:00 am wake-up call for the career clerk), (2) refused her judicial assistant's requests for help, (3) refused to participate in the Court's EDR process, and (4) inappropriately shared confidential details regarding the EDR matter with 95 court staff members and stated that her judicial assistant's concerns were, in Judge Newman's view, not "significant." April 6 Order at 6; ██████████ Aff. [10] ¶¶ 1, 3-4; ██████████ Aff. [1] ¶ 35 ("Despite my

requests to stop, the clerk continued to contact me outside of regular working hours after bringing the matter to Judge Newman’s attention.”); Ex. 6 (email from Judge Newman to 95 staff members). Judge Newman sent this email to the court staff distribution list just three hours after being reminded not to use the court distribution for emails containing sensitive matters. Ex. 6. The EDR process and its confidentiality are hallmarks of the judiciary’s workplace conduct program. EDR Plan for the Federal Circuit § IV.B.1 (“All individuals involved in the processes under this Plan must protect the confidentiality of the allegations of wrongful conduct . . . Information will be shared only to the extent necessary and only with those whose involvement is necessary to address the situation.”).

Citing several specific examples, her judicial assistant filed a request for assisted resolution alleging that Judge Newman “was being abusive and retaliating against me” and “created a very hostile work environment for me.” ██████████ Aff. [1] ¶¶27, 31. Through the EDR process, the judicial assistant was given an alternative workstation outside Judge Newman’s chambers as he continued to work for Judge Newman. *Id.* ¶¶ 31–32. In response, Judge Newman told other members of her chambers staff that her judicial assistant could no longer be trusted. ██████████ Aff. [9] ¶ 4 (law clerk stating he was informed by Judge Newman to no longer include ██████████ on chambers communications “because he could not be trusted”). Judge Newman refused to participate in the EDR process or to respect the process, including the workstation move. Staff members reported that on April 18, Judge Newman stated her intention to have her judicial assistant forcibly removed from the building or arrested. *See* ██████████ Aff. [2] ¶ 6 (“Judge Newman then said that she was going to have ██████████ ‘removed from the court’ or ‘arrested.’”); ██████████ Aff. [7] ¶ 19 (“Judge Newman stated that she would have ██████████ removed from the court or arrested.”). Although

Judge Newman had been informed that her judicial assistant was temporarily provided an alternative workplace under the Court's EDR plan, she refused to accept that accommodation (or could not remember it), and on April 19 she gave the judicial assistant an ultimatum: return to chambers immediately or she would accept his resignation (*i.e.*, he would lose his job). ██████████ Aff. [1] ¶ 34 ("I understood Judge Newman as saying that she was going to terminate me immediately unless I dropped my request for an alternative work arrangement under the court's Employment Dispute Resolution Plan . . ."); ██████████ Aff. [10] ¶ 8.

In light of these events, the judicial assistant resigned from Judge Newman's chambers, he was placed on the Clerk's Office staff, and an email was sent to Judge Newman on April 19, 2023, informing her that the judicial assistant was no longer a member of her chambers and that he wished for there to be no further communication to him by any member of the Newman chambers, including the Judge. *See* Ex. 4; ██████████ Aff. [10] ¶ 9.

On the same day, one of Judge Newman's law clerks also sought to and did remove himself from Judge Newman's chambers. He informed Judge Newman that he was uncomfortable performing personal work for her rather than court-related work. ██████████ Aff. [9] ¶ 6. He indicated that he was uncomfortable in chambers after Judge Newman told him that her judicial assistant could not be trusted and should be excluded from all chambers communications. *Id.* ¶¶ 2–4, 7, 9–16. He stated that he started teleworking to avoid the "drama, politics, and stress" in chambers. *Id.* ¶ 7. He requested to be transferred to another chambers. *Id.* ¶¶ 11, 14. Judge Newman refused to let him work for another judge, indicating that the optics would not be good for her and that he had two choices: stay or resign. *Id.* ¶ 14. The law clerk resigned, and he was taken on as a law clerk by another judge of the Court; he requested no further contact with Judge Newman, and

Judge Newman received an email to that effect on April 19, 2023. *Id.* ¶ 17; *see* Ex. 5.

Judge Newman acknowledged receiving the email about her law clerk, indicated that her clerk’s resignation was “appropriate,” and stated that the clerk’s separation from her chambers should be expeditiously processed. *See* Ex. 5. Yet, eight days later, Judge Newman emailed all judges on the Court indicating that she had not “released” the law clerk and that his continued service at the Court in another chambers was “in violation of my right to law clerk services.” Ex. 7. Similarly, Judge Newman was fully informed that her judicial assistant had resigned on April 19. *See* Ex. 4. Yet again 8 days later, she emailed all judges stating: “I never released my judicial assistant [] from my chambers staff. His movement to your staff, without consultation with me, violates his confidentiality and other obligations to me.” Ex. 7.

Despite being repeatedly told that the judicial assistant chose to leave her chambers because of her alleged abusive treatment of him, Judge Newman has accused the Court, various judges, the Chief Judge, and the Clerk of Court on multiple occasions of having improperly taken her judicial assistant away and/or depriving her of secretarial services. *See* Exs. 3, 8–9; *see* [REDACTED] Aff. [4] ¶¶ 4, 10–11, 13 and attached exhibits (quoting Newman May 17 email stating that he “deprived [her] of secretarial services” (alteration in original)).

These facts raise concerns about Judge Newman’s confusion, memory, and ability to interact with court staff—all of which contribute to our concerns that she may have a disability that renders her unfit to continue as an active judge.

Moreover, Judge Newman’s career clerk, who has been with her for several years, on advice of counsel, refused to answer basic questions from the Committee about her

responsibilities in chambers or about Judge Newman’s mental fitness, instead invoking the Fifth Amendment privilege against self-incrimination. That invocation was proper only if it was reasonable to believe that answering questions about the clerk’s duties could expose the clerk to criminal liability. *See Doe ex rel. Rudy-Glanzer v. Glanzer*, 232 F.3d 1258, 1263 (9th Cir. 2000). For example, when asked, “Q. We understand that you are her career clerk. Can you tell us about that role and what your responsibilities are? A. I am going to invoke my right under the Fifth Amendment to avoid self-incrimination.” ██████████ Deposition at 4:5–9. She further invoked the Fifth Amendment when asked about her perceptions of Judge Newman’s ability to carry out her job. *Id.* at 30:4–9.

4. Dysfunctional Behavior Suggests Disability and Creates Workplace Abuse Concerns

Judge Newman has baselessly and relentlessly accused various staff of stealing her computers, stealing her files, depriving her of secretarial services, and acting as counsel against her. ██████████ Aff. [4] ¶¶ 4, 10–11, 13, 25–40 and attached exhibits; ██████████ Aff. [11] ¶¶ 2–6, 8; Exs. 3, 8, 9 at 9; ██████████ Aff. [1] ¶ 14. Staff described Judge Newman in their interactions with her as “aggressive, angry, combative, and intimidating”; “bizarre and unnecessarily hostile”; making “personal accusations”; “agitated, belligerent, and demonstratively angry”; “ranting, rambling, and paranoid”; and “mumbling” and “pacing.” ██████████ Aff. [4] ¶ 37; ██████████ Aff. [11] ¶ 5; ██████████ Aff. [2] ¶ 3; ██████████ Aff. [8] ¶¶ 3, 5; ██████████ Aff. [7] ¶ 19; ██████████ Aff. [1] ¶ 33. One staff member indicated that “Judge Newman is simply losing it mentally.” ██████████ Aff. [2] ¶ 12. Given that this behavior is reported to occur in scenarios where it is clear that Judge Newman is confused or has forgotten how to perform tasks that she could previously do, or is unable to comprehend instructions, there is a reasonable basis to conclude that

this inappropriate conduct towards staff is related to a disability.

Judge Newman has become convinced that, when her judicial assistant's computer was moved out of her chambers along with him (as is standard practice), *see* ██████████ ██████████ Aff. [4] ¶ 28, files from her chambers were removed with it. Multiple staff members from the IT Department and the Clerk's Office have explained to her over and over again that all chambers information was stored on her chambers' shared network drive, not the hard drive on that computer; that the hard drive on that computer had specifically been checked multiple times and contained none of her chambers' information; and that IT could help her locate whatever information she needs. *See* ██████████ ██████████ Aff. [4] ¶¶ 27–40 and attached exhibits; ██████████ ██████████ Aff. [11] ¶¶ 2–6. Judge Newman, however, either was unable to understand or refused to accept these explanations.

The Clerk of Court¹³ detailed Judge Newman's repeated email accusations that he was involved in "illicit removal" of equipment from her chambers and that he participated in the theft or removal of chambers records including her financial disclosure information—along with accusations that he was acting as Chief Judge Moore's lawyer, that he was Judge Newman's "adversary," and that he repeatedly withheld secretarial services from her. ██████████ ██████████ May 31 Aff. [4] ¶ 4 and attached exhibits. He reported how he had to explain to Judge Newman *five* separate times that no one had stolen her computer or her records and that he verified that fact and had the IT Department verify it on multiple occasions. *Id.* ¶¶ 25–40; *see also* ██████████ ██████████ ██████████ Aff. [4] ¶ 27 & Ex. C at 2 ("Because all of your chambers materials, drafts, and documents are stored on your chambers network drive and not the local desktop, nothing about

¹³ Before July 1, the court's current Clerk of Court was Deputy Clerk and at times Acting Clerk of Court.

the move of this desktop ever hindered, restricted, or interfered with access by either you or your chambers staff to these materials.”). He described Judge Newman’s behavior towards staff as “agitated, belligerent and demonstratively angry.” *Id.* ¶ 37 and attached exhibits. And he has stated that “the hostile nature of Judge Newman’s personal accusations against me stands in sharp contrast to how I have interacted with any of the other 50-or-so federal judges with whom I have worked both in the Federal Circuit and in other federal courts since I began working in the federal judiciary in 2004.” *Id.* ¶ 5.

After Judge Newman had once again accused the Clerk’s Office employees of stealing her computer and files, on May 16, 2023, IT staff were sent to her chambers to assist her. ██████████ Aff. [11] ¶ 2; *see also* ██████████ Aff. [8] ¶¶ 1–5. The IT staff told Judge Newman that they knew exactly where her financial disclosure information was located on her desktop and offered to show her. ██████████ ██████████ Aff. [11] ¶¶ 3–5. She angrily refused to let them touch her computer. *Id.* ¶ 3. They offered to show her law clerk where the file was located if she preferred. *Id.* ¶ 6. She refused that assistance as well. *Id.* She was “clearly upset and frustrated and was walking back and forth mumbling about how her computer and phone had been taken away from her when that was not the case.” *Id.* ¶ 8; *see also* ██████████ Aff. [8] ¶¶ 3, 5 (“Judge Newman was pacing back and forth and visibly angry and frustrated I found Judge Newman’s behavior during this whole event to be very bizarre and confusing.”). Judge Newman became angry, said that her judicial assistant had stolen her computer, phone, and files, and demanded “that she wanted her ‘twenty-year-old computer’ back.” ██████████ Aff. [11] ¶ 4. Her anger was so intense it raised fears that she might collapse. *Id.* ¶ 7 (“I got worried that Judge Newman was getting so angry that she might collapse or have a heart attack

if the conversation continued.”); *id.* ¶ 8 (reporting being shaken by the exchange).

Judge Newman’s accusatory interactions with staff about her supposedly stolen computer continued unabated even into July of this year, when she claimed that “decades of my work and my information” were on the computer and accused staff of “clever dissembling,” being “shameful,” and engaging in “trickery” after they again repeatedly explained that none of her information was on the hard drive of that computer. *See* Ex. 9 at 29. In a single two-day period from July 6 to July 7, more than two dozen emails passed between Judge Newman and the Director of IT, the Help Desk Manager, and the Clerk of Court regarding her allegations that they stole her computer and files and their attempts to explain to her that her files all reside on her chambers’ shared drive and none of her files were on the judicial assistant’s hard drive. *See generally* Ex. 9; *id.* at 4 (Director of IT confirming “[redacted] has no access to Judge Newman’s shared drive nor has any of Judge Newman’s data stored locally on his PC.”); *id.* at 5 (IT staff member confirming the same). The staff respectfully and patiently explained to Judge Newman that “[e]very chambers stores those items on their network drives which are accessible to every computer in that chambers. The items you describe are located on your network drive.” *Id.* at 18; *see also, e.g., id.* at 22 (Clerk of Court explaining to Judge Newman that “I am at a loss for how different a way I can again explain what I have explained to you repeatedly for months. Your files are on your network drive. You have access to everything.”); *id.* at 9 (Director of IT again explaining “[w]e have checked, double checked and triple checked and there is no data on any local computer or drive that belongs to you. All of your data is on the Newman share.”); *id.* at 12 (Director of IT confirming a third time that “no Newman Chambers files reside on [redacted]

PC. There is nothing to return you as we informed you previously that all Newman Chambers files were moved to the Newman Share”); *id.* at 15 (Clerk of Court explaining “we have offered repeatedly to assist you with locating any files you cannot find or access. However, through our many conversations, we have yet to learn of any file or record of your chambers that is actually missing or unavailable.”); *id.* at 26 (“Please let us know what you cannot locate. Our staff is available and willing to assist you.”).

Various employees have described the toll that recent encounters with Judge Newman have taken on them, including by causing them serious anxiety, stress, and discomfort. ██████████ Aff. [4] ¶¶ 5, 36 (“██████████ was audibly upset and bothered and he said it was due to how Judge Newman behaved and treated him.”); *id.* ¶ 6 (stating interactions with Judge Newman caused “emotional stress and discomfort, including loss of sleep and heightened anxiety”); ██████████ Aff. [11] ¶ 8 (“I was left shaken and upset from this experience.”); ██████████ Aff. [1] ¶ 37 (“The past few months have been extremely stressful and have caused severe anxiety and emotional distress brought on by Judge Newman’s recent behavior towards me.”); ██████████ Aff. [9] ¶ 14 (“[W]orking in [Judge Newman’s] chambers was hurting my ability to complete my work, taking a toll on my mental health, and harming my relationships at the court.”); ██████████ Aff. [10] ¶¶ 9, 10 (describing ██████████ as “visibly emotional” due to Judge Newman’s behavior and having confided “the toll that this entire experience was taking on his physical and mental well-being, including seeking help from medical professionals”). Interactions with Judge Newman are now so dysfunctional that the Clerk of Court has advised staff to attempt to avoid interacting with her in person or, when they must, to bring a co-worker with them. ██████████ Aff. [4] ¶ 6; ██████████ Aff. [8] ¶ 1; ██████████ Aff. [11] ¶ 1.

5. The Response Alleges that She Can “Run Her Chambers as She Sees Fit”

Rather than dispute the specific evidence provided by staff members, Judge Newman insists that none of it indicates any cause for concern and that short of “obvious red lines such as criminal activity or sexual harassment,” she “is free to run her chambers as she sees fit”—even if it takes a toll on the health of employees. Response 48. Judge Newman’s assertion that it is “entirely appropriate” to refuse to participate in the EDR process and “refus[e] to accept” an alternative work arrangement under the Court’s EDR plan, Response 48 n.38, is simply not consistent with court rules or current workplace conduct standards. And where an alternative work arrangement was created specifically for the benefit of an employee who had raised concerns about abuse and retaliation by Judge Newman, it is especially inappropriate for Judge Newman to then threaten to fire the employee (and tell others that she would have him arrested and removed from the building) unless he ignores the alternative work arrangement. Such behavior is not reasonably defensible.¹⁴ Indeed, it is so far outside the norm that, coupled with the other evidence described herein, it supports the concern that Judge Newman’s behavior may be the result of cognitive impairment.

¹⁴ The Response suggests that if Judge Newman “treated staff more harshly than was necessary,” it may be because of the “Committee’s unjustified actions which have taken an enormous toll on Judge Newman.” Response 53-54. But in her August 25, 2023 discussion with Dr. Carney, Judge Newman responded to a question about this proceeding’s effects on her mental state: “none! To my amazement, even in this turmoil-well perhaps that’s the fatal flaw—it’s not getting to me.’ She stated her mood remains upbeat.” Ex. 10 (Carney Rep.) at 4.

In *Adams*, the behavior of Judge Adams towards others in the courthouse was held sufficient to support an order compelling medical examinations for disability as determined by the special committee. See *In re Complaint of Judicial Misconduct*, C.C.D. No. 17-01 at 2–10, 16–17, 24–29, 35–36 (U.S. Jud. Conf. 2017). So too here. It is consistent with the Act to conclude that a Judge who remains unaware of basic standards of conduct towards employees, who demonstrates memory loss, confusion, lack of comprehension, and who lashes out at staff with baseless accusations of theft or hacking, might be impaired by a cognitive disability, requiring the Committee-specified medical examinations as part of a complete investigation.

We find that the evidence contained in the employee affidavits and deposition created a reasonable basis for the Committee’s May 16 Order directing medical examinations and the specified medical records to ascertain whether Judge Newman may have a disability. And the evidence also supports the Order’s request that Judge Newman sit for an interview, in which she could enhance the accuracy of the proceeding by, among other things, correcting any errors in the evidence or aid understanding of its implications.

6. The Response Incorrectly Claims Lack of an Opportunity to Counter the Employee Allegations

Judge Newman’s August 31 Response complains for the first time that she was never given an opportunity to contest the information provided in affidavits in the record. Response 39–40. That assertion is incorrect. The Committee detailed much of the evidence in its May 3 Order then again in its May 16 Order and its June 1 Order. And in none of her responses did she challenge any of the evidence. In its June 1 Order, the Committee recognized that Judge Newman might wish to contest the Committee’s recited

bases for its Order and for that very reason provided Judge Newman all the affidavits and the deposition transcript on which the Committee had relied. June 1 Order at 5. She chose not to challenge them. Instead, in her July 5 Brief she made the choice not to “delv[e] into the minutia[e] of these affidavits,” but instead to dismiss them as reflecting “petty grievances” and to argue that “even assuming” the information in them was true, it “doesn’t even approach probable cause to believe that Judge Newman is mentally and/or physically disabled.” July 5 Br. 15. Other aspects of the affidavits she dismissed as “hardly worth responding to.” *Id.* Having bypassed the offered opportunity to contest the information in the affidavits, Judge Newman cannot claim now that she was never given the opportunity to do so.¹⁵

To the extent Judge Newman now alleges that the Committee did not permit her to include basis-contesting (or other) evidence in her July 5 Brief or to request an evidentiary hearing (for example, to cross examine the affiants), she waived those arguments. In its June 1 Order, the Committee explained its tentative view that “[t]here are no percipient fact witnesses to additional events that are relevant to the misconduct determination” and that

¹⁵ In addition, the Committee made clear in its May 16 Order that it wanted to interview Judge Newman so that “she could provide the Committee with information relevant to the Committee’s investigation, *including correcting any error of fact.*” May 16 Order at 23–24 (emphasis added). Judge Newman refused to take that opportunity to contest any information the Committee had gathered. In fact, at the end of the oral argument on July 13, the Committee offered Judge Newman’s counsel extra time to address any topics he wished to, and he declined to use that time to challenge the affidavits. Oral Arg. Tr. at 39:22–40:6.

“the question whether Judge Newman’s responses to the Committee’s orders constitute ‘refusing, without good cause shown, to cooperate in the investigation,’ Rule 4(a)(5), can be determined based upon the paper record established by the Committee’s orders and Judge Newman’s filed responses, along with any legal argument Judge Newman wishes to submit.” June 1 Order at 4. Judge Newman’s counsel quoted that language and expressly stated: “We agree with that assessment.” June 15 Letter at 3. If Judge Newman wanted to contest the decision not to hold an evidentiary hearing and conduct cross examination, she had the opportunity to do so, having been provided the evidence no later than June 1. Judge Newman made no such request in her filings on June 15, July 5, July 12, July 24, or August 14. Nor did she make any such request at the oral argument conducted on July 13. In short, Judge Newman had many chances to challenge the Committee’s evidence and she chose not to do so. Even now, she makes no specific allegations of any error in the many staff accounts of deeply troubling interactions, many of which are corroborated by Judge Newman’s emails. Her claim that she believed she could not provide contrary evidence is also belied by the fact that she did provide new evidence with her July 5 submission and more new evidence and a declaration with her August 31 submission.

* * *

The evidence received from court staff, standing alone, provides a reasonable basis for the Committee’s May 16 Order concerning medical examinations, medical records, and an interview. Judge Newman had many opportunities and never disputed it.

B. The Evidence of Productivity Deficiencies, Even With a Reduced Workload, Supports the Committee’s Order

In addition to the overwhelming evidence of Judge Newman’s troubling interactions with staff, evidence from the Clerk’s Office supports our conclusion that the Committee had a reasonable basis for the ordered medical evaluations, records, and interview. The Clerk’s Office data¹⁶ demonstrate that Judge Newman—despite having a significantly reduced workload compared to other active judges on the Court—takes an extraordinarily long time to produce opinions. From October 1, 2020 through September 30, 2021, Judge Newman authored only 25 opinions (including dissents/concurrences), while the average active judge authored 44 opinions. See ██████████ Aff. [12] ¶¶ 10, 12; ██████████ Aff. [13] ¶¶ 14, 15. Judge Newman averaged 249 days to author a majority opinion—more than four times as long as other active judges (61 days). ██████████ Aff. [12] ¶¶ 11, 13.

Despite reductions in Judge Newman’s workload, this trend has continued in recent months. The court has tried to support Judge Newman for years, reducing her work in response to concerns about her productivity. Judge Newman last participated in motions panels in January 2021. ██████████ Aff. [13] ¶ 23. Motions panels are a time consuming and required aspect of an active judge’s workload. Active judges participate in 3–4 months of motions panels each year. In 2023, there have been approximately 70 motions resolved by written opinions each month. In 2022, there were an average of 63 motions resolved by written opinion each month. R&R 54 n.16. Judge

¹⁶ Judge Newman does not meaningfully dispute the Clerk’s Office data, but instead points to analyses of publicly available data purportedly showing Judge Newman’s productivity and delay are unexceptional. For the reasons explained in the Committee’s R&R, *see* R&R 56–58, the Council credits the data from the Clerk’s Office.

Newman has not disputed that she acquiesced in the 2021 reduction in workload by excusing her from the motions panel duties.

Further reduction in her workload occurred from May 2022 through April 2023—a period in which Judge Newman sat on half the number of cases as her colleagues (65 compared to 128 for an average active judge). Judge Newman acquiesced in this reduction as well. There is no evidence that she ever objected to sitting less than her colleagues, and her monthly requests were consistently worded to indicate she would sit “as needed.” Ex. 11.

Despite a substantially reduced workload, from October 2021 through March 2023, Judge Newman authored (including dissents/concurrences) less than half the number of opinions of an average active judge (28 compared to 61 for an average judge) and her opinions took approximately four times as long to issue (199 days compared to 53 days).¹⁷ See ██████████ Aff. [12] ¶¶ 15, 17; ██████████ Aff. [13] ¶¶ 17, 18. She took four times as long to write half the opinions while sitting on half the number of cases as her colleagues.¹⁸

¹⁷ Judge Newman was not merely an outlier from the *average* active judge, but from *all* active judges who sat the full period reviewed. The next closest judge authored 55 opinions (43 majority and 12 dissents/concurrences) with an average time to issuance of 106 days. ██████████ Aff. [13] ¶ 19. Thus, the next closest judge wrote approximately twice as many opinions in approximately half the time.

¹⁸ On March 8, 2023, when the Council unanimously voted not to allow new case assignments to Judge Newman because of her extraordinary delays, she had 9 majority opinions that had been pending for an average of 126 days.

The Council finds these data raise a concern that Judge Newman is no longer capable of efficiently and effectively carrying out the work of an active judge and support the Committee's conclusion that there was a reasonable basis to seek medical examinations, medical records, and an interview to determine if these delays are attributable to a disability. *See* 28 U.S.C. § 351.

III. The Refusal to Comply with the May 16 Order Was Not Excused by Good Cause

Judge Newman's refusal to comply with the Committee's May 16 Order was not excused by good cause. Judge Newman's two main arguments are that this JC&D matter should be transferred, and she has already provided two medical reports. She also has attacked earlier orders and actions by the Chief Judge or Committee as a basis for excusing non-compliance with the May 16 Order. We find these arguments meritless.

A. The Request for Transfer Does Not Provide Good Cause for The Refusal to Comply with the May 16 Order

Judge Newman has maintained, and continues to maintain, that this matter should be transferred to the

On May 25, when Judge Newman asked the Council to reconsider paneling her for new cases, she still had 7 of those 9 opinions which had been pending for an average of 163 days. As of September 1, 2023, Judge Newman had issued 4 non-precedential majority decisions, and they took her on average 255.5 days each. She continued to have 3 majority opinions in her backlog which averaged 257 days (one of which was the oldest case in the court). In the last six months while sitting on zero motions panels, and zero new cases, Judge Newman has taken on average 255.5 days to write her 4 majority opinions.

judicial council of another circuit—and that, barring transfer, she has good cause to refuse to comply with the Committee’s May 16 Order. We disagree on all counts. We conclude that the decision not to transfer does not excuse Judge Newman’s refusal to comply with the Order and that granting Judge Newman’s transfer request¹⁹ was never appropriate—and certainly is not at this point.

Under the rules, transfer is warranted only in “exceptional circumstances.” *See* Rule 26; Implementation of the Judicial Conduct and Disability Act of 1980, Report to the Chief Justice of the Judicial Conduct and Disability Act Study Committee, 239 F.R.D. 116, 214 (Sept. 2006) (Breyer Committee Report) (“Transfers should not be a regular occurrence.”). Judge Newman has not identified (nor do we see) exceptional circumstances warranting transfer. Indeed, her response to the R&R never once acknowledges this demanding standard.

Judge Newman’s arguments for transfer—by way of seeking to justify her refusal to cooperate—generally rely on (1) inapplicable authority or (2) unfounded accusations of bias. As explained below, her authority is unpersuasive, and her arguments as to bias—essentially, that because the judges of this circuit have worked with her, they cannot be impartial—if accepted, would convert the relatively routine into the exceptional, with adverse consequences for the policies of the Act and of proper judicial administration more generally.

¹⁹ Under Rule 26, Judge Newman’s transfer request (and the decision not to grant that request) more precisely refers to a request that the Chief Judge or Council ask the Chief Justice of the United States to transfer. For simplicity’s sake, and because the distinction is immaterial to our discussion, we characterize the request as concerning transfer itself.

As to authority, while Judge Newman insists that matters involving a circuit judge that get to the Committee stage are always transferred, her examples consist only of cases involving isolated alleged instances of past misconduct not related to disability. Response 73–74. She gives no example—nor are we aware of any—where a case involving disability was transferred. And for good reason. Although an investigation into a discrete incident or set of incidents that occurred entirely in the past could potentially be pursued from afar without serious detriment, this case, by contrast, involved ongoing behavior that was having ongoing effects on the functioning of court staff in the court’s building and the functioning of this court. As a result, ready access to the Committee was vitally important both for ensuring that all relevant information was captured in the investigation and for providing court staff confidence that they were being heard. The importance of that access is underscored by one of the Breyer Committee Report’s factors counseling against transfer—*i.e.*, “outside judges’ relative ignorance of local circumstances and personalities.” 239 F.R.D. at 215; *see* R&R 87–88.²⁰

As to alleged bias, Judge Newman argues that members of the Judicial Council have “personal knowledge of disputed evidentiary facts concerning the proceeding” and are therefore biased—requiring transfer. *See* Response

²⁰ As the Committee has observed, the Breyer Committee Report’s factors counseling against transfer weigh against transfer in this case. *See, e.g.*, May 3 Order at 10–11; R&R 91 (“For the reasons stated, based on considerations set forth in the Breyer [Committee] Report, we think it was proper in this matter not to . . . transfer.”).

71–73.²¹ This argument is unpersuasive on a couple of levels.

First, this investigation has significantly narrowed—from originally considering whether Judge Newman suffered from a disability, to now (since June 1, 2023) considering whether her failure to cooperate constitutes misconduct under the rules. As the R&R explained, it would “present a different question if a particular interaction between judges provided the core evidence of suspected disability and that interaction was likely to be a subject of dispute at a hearing.” R&R 73. But here, “[t]here were no personal interactions between Judge Newman and other judges that would come up as disputed facts.” *Id.* Indeed, the only question before the Council is whether to adopt the proposal set forth in the R&R.

Second, Judge Newman’s argument simply proves too much. The argument appears to be that judges on this court have views of Judge Newman by virtue of having interacted and worked with her, and that such knowledge prevents impartiality and demands transfer.²² *See*

²¹ In advancing this argument, Judge Newman quotes from 28 U.S.C. § 455, the judicial recusal statute. Assuming, *arguendo*, that this statute applies in this context, each member of the Council has carefully considered whether recusal/disqualification was required under § 455 and determined that it was not. Each member of the Council likewise carefully considered whether recusal/disqualification was required under Rule 25 and determined that it was not.

²² To the extent that Judge Newman believes that judges who attempted unsuccessfully to broker an informal resolution with her to avoid these proceedings, March 24 Order at 5–6, are necessarily biased or must necessarily

Response 71–73. The implication of this argument is that circuit judges—who will necessarily interact with their colleagues in the same circuit—may not sit on disability proceedings concerning those colleagues. This is plainly not the case. To the extent she claims the Judicial Council members are biased against her because she dissents more than any other judge on the court, she identifies no reason why her long practice of dissenting especially often would somehow now be the cause for the present inquiry. Her assertions of bias are grounded in little more than an assertion that her colleagues are biased simply because they know and work with her.

Rule 25 provides particular standards for disqualification. And the commentary to that rule expressly states that “a judge is not disqualified simply because the subject judge is on the same court” and that bias or prejudice warranting disqualification must be “created by circumstances other than an association with the subject judge as a colleague.” Rule 25 cmt. As the R&R explained, by design, the statute and rules anticipate that judges will institute, investigate, and ultimately decide disability proceedings about their colleagues. *See, e.g.*, 28 U.S.C. §§ 351–353 (requiring chief judge to receive and review complaint and form special committee); Rule 11(a) (requiring chief judge to review complaint), 12(a) (requiring the special committee to consist of chief judge that identifies complaint); *see*

recuse, that is not correct. It has historically been, and should continue to be, the case that when a judge reaches the stage where there are concerns about mental fitness, the judge’s colleagues step in to try to address the issue informally with the judge (and, sometimes, family and others closest to the judge). Doing so is not only consistent with the rules, but entirely appropriate. If attempting to speak with a judge after concerns have arisen necessitated recusal, it would stymie the informal resolution process.

also R&R 73–74. Congress and the Judicial Conference were certainly aware of § 455, and also of the reality that “[j]udges at every level of the system interact with each other frequently and in many ways.” Irving R. Kaufman, *Chilling Judicial Independence*, 88 *Yale L.J.* 681, 711–12 (1979) (describing how circuit and district judges, especially within a single circuit, commonly get to know each other). The way Congress structured the Act and the Judicial Conference structured the rules suggests that both bodies concluded that § 455 posed no barrier to judges deciding disability proceedings about their fellow judges, including those on the same court.²³

The bases for deciding not to grant Judge Newman’s transfer request were, and remain, sound. These bases—which easily support the conclusion that this matter does not present the requisite “exceptional circumstances”—were described in the R&R. *See* R&R 86–92. But they are worth recounting here, particularly by way of addressing Judge Newman’s latest criticisms of those bases.

At the outset, we note that Judge Newman first suggested transfer of this matter on April 21, 2023. By that point, the Committee had already conducted more than a dozen interviews and a deposition, and many troubling events were occurring in real time. Just two days earlier, on April 19, two of Judge Newman’s chambers staff came unsolicited to the Committee to complain about their

²³ We note also that, in 28 U.S.C. § 372(b), Congress provided that a majority of the members of a circuit’s judicial council may sign a certificate of disability as to one of their fellow circuit judges (the certificate to be presented to the President). This provision is another instance in which Congress contemplated, and deemed unproblematic, an assessment by a circuit’s judges as to another judge on their circuit.

treatment by Judge Newman and to request the court's assistance in relocating them. Both indicated that working with Judge Newman was taking a toll on their mental health, and both requested no further contact with Judge Newman. The Chief Judge, in consultation with the Committee, was able to relocate both employees, providing them real-time relief.

Indeed, the ongoing nature of Judge Newman's troubling interactions with staff demonstrates why it was especially important for this matter *not* to be transferred to another circuit. Behavior that tended to confirm concerns about Judge Newman's mental state occurred on an almost weekly basis during most of the Committee's investigation. Because the Committee consisted of members of this court, staff were able to report concerns to the Committee on an almost real-time basis, and they did. That ensured that the Committee developed a complete picture of the nature of Judge Newman's behavior as efficiently as possible and also reassured staff that they had an immediate avenue for presenting concerns raised by Judge Newman's behavior so that they could be addressed in this process. If the investigation had been transferred to another court, unknown to the staff and less accessible to them, the investigation could not have been carried out in the same expeditious manner. Acting expeditiously is one of the Committee's charges, as the Committee explained. *See* R&R 87–88; *see also* 28 U.S.C. § 353(c); *id.* §§ 352(a), 353(a); H.R. Rep. 96-1313 at 11; May 16 Order at 24; May 22 Order at 2–3.

Judge Newman disagrees that the Committee's ability to gather information efficiently and timely address employee concerns was relevant to the transfer decision—or indeed, that the information gathered from employees was relevant to the Committee's investigation at all. *See* Response 100–01. But we find her disagreement is not well reasoned. For example, as to the relevance to the transfer

decision, Judge Newman speculates that if the matter had been transferred, nothing would have precluded “forwarding memoranda of . . . conversations or affidavits submitted by the staff” to another judicial council. *Id.* at 100 (citing the speed of electronic transmission). Yet this argument fails to meaningfully engage with the Committee’s observation (which we endorse) that (1) “another court could not, from afar, create an environment in which this [c]ourt’s staff could raise concerns based on their interactions with Judge Newman in an almost real-time fashion”; (2) “without that ready ability to report incidents, . . . important information in this investigation might have been lost”; and (3) “[p]articularly in this case, placing distance between the individuals who witness and experience a subject judge’s behavior and the investigating body would have inhibited, not promoted, the aims of the Act.” R&R 89. Indeed, as a factor counseling against transfer, the Breyer Committee Report notes that “transfers may increase time and expense if there is the need to ship files, arrange witnesses, and handle other matters from a distance.” 239 F.R.D. at 215.

As to Judge Newman’s suggestion that concerns expressed by staff are not relevant to the investigation, we think it beyond reasonable dispute that these concerns—as to, among other things, memory loss, confusion, and lack of comprehension—are relevant as substantiating the Committee’s order. *Cf.* Response 101 (characterizing the perception of Judge Newman’s behavior only as “unnecessarily hostile”). And, to the extent her suggestion of irrelevance rests on a belief that the Committee deems her delays in resolving cases alone a sufficient basis for its order, *see id.*, the Committee has not limited its basis in that fashion.

In sum, we agree that the decision not to grant Judge Newman’s transfer request was sound and are unpersuaded by her arguments to the contrary.

Judge Newman also maintains that we should grant her transfer request *now*. See Response 104. We reject that request. Transfer at this point, when the four-month investigation involving more than 20 interviews with staff is complete, there have been more than a dozen orders, Judge Newman has filed at least half a dozen substantive letters or briefs, oral argument was conducted, and the Committee issued a 111-page R&R with over 300 pages of supporting evidence, simply makes no sense.

Moreover, Judge Newman's prior representations make clear that there is no handing this off to another circuit to just "wrap it up." She has claimed that the process was tainted from the outset, that all the employee affidavits were effectively coerced, and that a do-over is necessary. While she has indicated that she may be open to some kind of medical examinations if this proceeding is transferred, see Response 62, she has avoided any suggestion that, if the matter were transferred, she would undergo the full neuro-psychological testing that was recommended by Dr. [REDACTED] and is the subject of the May 16 Order. In fact, Judge Newman says she "will not, under any circumstances, submit" to the requests for the medical examinations and medical records made by the Committee "either now or in the future." Response 105 n.60; *id.* at 112 n.67 (indicating a "do-over" would be necessary if another circuit determined these proceedings were "marred with impropriety"). And while she implies (in carefully qualified language) that she will undergo "*appropriate* medical examinations," Response 65 (emphasis added), she has also stated that if transferred she intends to open a new negotiation, "including on selecting medical providers and setting the appropriate parameters of any examination," May 25 Letter at 3. She has also pointedly reminded the Committee that the "effect" of transfer is that "the transferee council is not bound by any evidence, reports, or decisions made by the transferor council," and she has expressly

“reserve[d] the right to request that the transferee council restart the entire process.” May 10 Letter at 5. These various representations belie Judge Newman’s assurance that transfer is appropriate because “the only question now is the *evaluation*” of the gathered evidence. Response 101 (emphasis in original). What she describes as “evaluation” is, in effect, a do-over.

Retaining this case also protects court employees by permitting the Chief Judge and Council to respond to Judge Newman’s ongoing conduct. The Breyer Committee Report notes that the tendency of judges to fall victim to “a kind of undue ‘guild favoritism’ through inappropriate sympathy with the judge’s point of view or de-emphasis of the misconduct problem” in these types of proceedings was an important consideration in creating the report. 239 F.R.D. at 119. The report embodies this concern in its guidance on transfer considerations by recognizing that judges *outside* the subject judge’s circuit might be “disinclined to go through the emotionally draining work of imposing tough sanctions on judges not of their own circuit.” *Id.* at 215. Judge Newman’s conduct, which raises concerns about her cognitive state, includes threatening to have employees arrested, retaliating against employees for reporting concerns about Judge Newman, and berating staff regarding baseless allegations that she has been deprived by them of her computer, files, and secretarial services. We have an obligation to ensure that court employees are free from such abuse. Also important is ensuring that the harm to the public (*e.g.*, litigants) is avoided by expeditiously resolving this matter. This conduct continues to have collateral effects on this circuit’s staff and the effective administration of court business. Another circuit is not well positioned to hear, assess, and remedy those problems. Nor could another circuit handle the resolution as expeditiously as this circuit; that drawback, if this matter were

transferred, would further subject court staff to the conduct described above.

Finally, to the extent Judge Newman suggests that the decision not to grant her transfer request stems from a desire to “shield” the Committee’s work from review by another tribunal, *see* Response 101, the suggestion reflects a fundamental misunderstanding of this process. The rules already provide for review by the Committee on Judicial Conduct and Disability of the Judicial Conference of the United States (JC&D Committee) appointed by the Judicial Conference of the United States. Rule 21. And they ensure that the JC&D Committee, in its review of a matter, is independent of the circuit from which the matter arises. Rule 21(c) (“Any member of the Committee from the same circuit as the subject judge is disqualified from considering or voting on a petition for review related to that subject judge.”).

Accordingly, transfer is not warranted at this time. For the reasons previously articulated, Judge Newman’s request to transfer is denied without prejudice to refile after she has complied with the Committee’s May 16 Order.

B. The Medical Evidence is Not Good Cause for Her Refusal to Comply with the May 16 Order

The Response argues that two medical reports provided show that Judge Newman suffers from no disability and thus justify (retroactively) her refusal to comply with the Committee’s order. Specifically, it argues that the reports of Dr. Ted Rothstein and Dr. Regina Carney obviate the need for the medical examinations and records ordered by the Committee and therefore render her refusal to cooperate with the order excusable. We reject this argument for several reasons.

First, it is settled precedent that a subject judge may not circumvent the investigation process by submitting tests of her own choosing in lieu of those ordered by the

Committee. The holding of the JC&D Committee in the *Adams* case flatly contradicts the suggestion that—by simply providing alternative tests from her own providers—Judge Newman can effectively override the Committee’s decision that it is necessary to have the examinations, including a full neuro-psychological assessment, of Judge Newman by independent providers chosen by the Committee. See *In re Complaint of Judicial Misconduct*, C.C.D. No. 17-01 (U.S. Jud. Conf. 2017) (*Adams*). One of the core issues in *Adams* was whether a judge subject to a disability inquiry could refuse to undergo tests ordered by an investigating committee and administered by providers selected by the committee on the ground that the judge preferred different tests administered by different providers. As the JC&D Committee explained: “While Judge Adams has expressed a preference for being evaluated by an expert of his choosing and an opportunity to direct to some extent the nature of the examination, we conclude that the Special Committee and the Judicial Council appropriately exercised their discretion in determining that an examination by an independent expert is necessary to ensure accuracy and reliability of the procedures and examination results.” *Id.* at 32; see also *id.* at 36 (“We share the Judicial Council’s view that input from an independent medical expert is necessary to fully and fairly assess Judge Adams’s mental condition and fitness to continue to serve as a judge.”). Here, Judge Newman’s counsel admitted that (her first examiner) Dr. Rothstein had a long-time personal relationship with Judge Newman,²⁴ and counsel also has stated that he was classmates in medical school with (the second examiner) Dr. Carney,²⁵ who was flown from Florida to

²⁴ Oral Arg. Tr. at 38:18–24.

²⁵ Ryan Davis, *2nd Doc to Evaluate Judge Newman Says She’s Fit to Serve*, Law360 (Sept. 7, 2023), available at <https://www.law360.com/ip/articles/1718953/2nd-doc-to-evaluate-judge-newman-says-she-s-fit-to-serve>.

Washington, D.C., to interview Judge Newman and perform the 11-minute cognitive test featured in the resulting report.

Adams makes it clear that it is misconduct for a subject judge to refuse to comply with an order from a special committee for medical examinations on the ground that the judge would prefer different tests administered by different providers. We continue to believe that it is important that independent medical practitioners be selected to perform the medical examinations. Insisting upon an examination by an independent provider “is necessary to ensure accuracy and reliability of the procedures and examination results.” *Adams* at 32. The rule from *Adams* serves an important interest: ensuring that what may well be the most critical piece of the investigation—medical evaluations designed to ascertain whether the subject judge suffers from a disability impairing the ability to effectively discharge the duties of office—are as accurate and reliable as possible.

Second, the two reports Judge Newman has proffered are not remotely substitutes for what the May 16 Order directs, including the specified full neuro-psychological examination (and medical records). Neither the 10-minute partial MOCA nor the 11-minute 3MS are substitutes for the ordered full neuro-psychological examination (six hours) that Dr. ██████ advised was both necessary and that has been done in previous judicial disability inquiries. Nothing submitted by Judge Newman provides any adequate explanation for how the radically different, lesser examinations reflected in Dr. Rothstein’s and Dr. Carney’s reports are appropriate substitutes for the much more extensive examinations required by the May 16 Order. Given the demanding nature of an active judge’s job, it would be surprising if there were any sound basis for any such equation. There is nothing remotely adequate offered here.

1. Dr. Rothstein's Report

The Rothstein report relies on the Montreal Cognitive Assessment (MOCA), a screening test that takes only about 10 minutes to administer. *See* Rothstein Rep. (Ex. 12), 13 (MOCA test). The R&R pointed out flaws on the face of the report that made the Rothstein report unreliable. And the new declaration from Dr. Rothstein, submitted to the Council with Judge Newman's August 31 Response, actually *confirms* the problems with his original report identified in the R&R. *See* Rothstein Decl. (Ex. 12).

The full MOCA provides a total of 30 possible points. *See* R&R 100–102; Ex. 13. Dr. Rothstein noted that Judge Newman was unable to write (due to a broken wrist) and thus could not complete portions of the test worth 2 points and that she missed four points (4 of the 5 memory questions), which led him to report a score of 24 out of 28. As the R&R explained, however, if Judge Newman could not write, she also could not have completed another portion of the test (drawing a clock) worth 3 points and thus Dr. Rothstein inaccurately scored her test. *See* R&R 102. Dr. Rothstein's new declaration confirms that Judge Newman could not draw a clock. Rothstein Decl. ¶ 11. Therefore, he erred in crediting her with the 3 points related to the clock. Dr. Rothstein does not dispute that if the 3 points attributable to drawing the clock are properly taken out of Judge Newman's score, she actually scored a 21 out of 25. According to the MOCA website this translates to a scaled score of 25 out of 30, which is *below the normal range*. R&R 102–03, available at <https://mocacognition.com/faq/> (last visited September 17, 2023). Though that analysis was detailed in the R&R, Dr. Rothstein's new declaration does not dispute the conclusion about the proper score.

Dr. Rothstein's new declaration also confirms another problem with his earlier submission. He admits that he did not review any of Judge Newman's medical records before

forming his opinion but relied on her oral reports. Rothstein Decl. ¶ 9.

2. Dr. Carney's Report

The report from Dr. Regina Carney submitted with the Response was based on an interview with Judge Newman, a review of some medical records (it is not clear how complete the reviewed records were) and some information about a judge's job (it is not clear what), and administration of a Modified Mini-Mental State Exam (3MS). Dr. Carney reports that it took Judge Newman 11 minutes to complete the test. Carney Rep. at 5. The test consists of 34 questions that require the subject to answer such queries as "Can you touch your nose," "Who is the president of the United States," to count from 1 to 5 in forward and reverse, and to recall three words throughout the course of the approximately 10-minute examination. *See* Carney Rep. Ex. 1. According to the creators of the test, the 3MS was *not* designed "as a screening tool for dementia" and "many of the items in the . . . 3MS are not sensitive for detecting dementia in its early stage." Evelyn Teng & Helena Chui, *Manual for the Administration of the Modified Mini-Mental State (3MS) Test* (1996) at 2 (3MS Manual); *see also* Lei Feng et al., *The Modified Mini-Mental State Examination test: Normative Data for Singapore Chinese Older Adults and Its Performance in Detecting Early Cognitive Impairment*, 53 *Singapore Med. J.* 458 (2012) (concluding the 3MS "has limited value in detecting early cognitive impairment; tests with better performance should be considered in clinical practice."). According to the 3MS Manual, this test is better suited to "monitoring the progression of dementia to its middle and late stages." Ex. 2 at 2.

3. Inadequacy for the Disability at Issue

Besides the just-identified problems, we do not see the two reports as adequate substitutes for compliance with the May 16 Order because they do not come close to

persuasively taking account of the actual requirements of the job at issue. To effectively discharge the duties of an active circuit judge requires far more than the basic abilities tested by the MOCA and 3MS. The job of an active judge involves a heavy workload of cases many of which involve complex records, technical or otherwise specialized facts, application of law to fact and often novel legal issues. “It is axiomatic that the work of a lifetime appointed federal judge is demanding and requires the highest degree of functionality.” *Adams* at 29. In a typical month, an active Federal Circuit judge is assigned to three to four panels, each panel consisting of four argued cases and two cases submitted on the briefs, for a total of 18 to 24 cases per month. And all of these cases are heard in a single week. Each can involve extensive briefing and even more record material that the judge must review, comprehend, and analyze to resolve often-numerous disputes about often-complex and specialized factual and legal issues. The concentration and memory required is a league apart from the ability to recall simple “everyone knows” facts and a handful of words, and the stamina required is beyond that tested by the MOCA (10 minutes) or 3MS (11 minutes). For each panel, a judge hears two consecutive hours of oral argument (four cases with argument lasting 30 minutes). Thus, a Federal Circuit judge needs to be able to distinguish between and decide 18 to 24 cases, 12 to 16 of which are argued in a single week.

This Court has the difficult and unenviable task of ascertaining whether Judge Newman suffers from a disability rendering her “unable to discharge the duties of [her] *particular* judicial office.” Rule 4(c) (emphasis added). We find that neither Dr. Rothstein’s report nor Dr. Carney’s report permits the Judicial Council to make that determination. Judge Newman has not established that these reports are adequate substitutes for the medical examinations and medical records required (and interview

requested) by the May 16 Order. In particular, given the nature and demands of the job as an active judge, and the large body of evidence demonstrating Judge Newman's potential cognitive problems, the full neuro-psychological battery of tests required by the May 16 Order is necessary. The Council concludes that neither Dr. Rothstein's nor Dr. Carney's reports provide retroactive good cause for Judge Newman's refusal to comply with the Committee's order.

C. The Criticisms of Earlier Orders and Actions Do Not Undermine the Duty to Comply with the May 16 Order

Judge Newman's Response has sought to establish good cause for non-compliance with the May 16 Order by attacking earlier orders and actions and trying to construct a general picture of a hostile, bad-faith course of action, riddled with improprieties, by the Chief Judge and the other members of the Special Committee. This attack on how the three judges carried out their difficult statutory obligations is unwarranted and does not undermine the amply supported May 16 Order. The Council itself unanimously took some of the complained-of steps, *e.g.*, the suspension of new case assignments. And it has scrutinized all the Response's particular assertions about and characterizations of events out of which the Response creates its accusatory portrait. After thorough consideration and review of the record, we conclude that the assertions and characterizations are incorrect and unfounded and that the overall portrait wholly lacks merit. We see nothing in the Chief Judge's and Committee's course of action but good faith execution of a difficult, statutorily assigned task. We thus reject the Response's pervasive attempt to establish good cause for non-compliance with the May 16 Order by focusing on other orders and actions.

We divide our discussion of the Response-raised matters separate from the May 16 Order into two sections. We first address the Response’s effort to undermine the May 16 Order by criticizing certain aspects of the Chief Judge’s March 24 Order (identifying a complaint) and the Committee’s April 7 Order (the first medical-examination order). We then address the assortment of other attacks on how the Chief Judge and Committee proceeded.

1. The Criticisms of the March 24 and April 7 Orders Do Not Undermine the May 16 Order

The Response seeks to undermine the duty to comply with the May 16 Order by focusing on asserted flaws in two earlier orders—the March 24 Order identifying the complaint and the April 7 Order that first required medical examinations. The core argument is that (a) these orders were critically dependent on statements that Judge Newman suffered a “heart attack” and underwent coronary stent surgery in 2021 and had a “faint[ing]” episode in 2022 and these statements are unsupported (even “fabricated”) and (b) everything that followed must as a consequence be thrown out as illegitimate. Response 6, 41–43. This contention is incorrect in both its premises and in its conclusion about the implication for the present matter of non-compliance with the May 16 Order.

The premises of the Response’s argument regarding the March 24 Order are defective for multiple reasons. First, the Response is flawed regarding the existence of the episodes at issue. As to a 2022 “faint[ing]” episode, there is evidence of just such an occurrence. ██████ saw Judge Newman in 2022 being assisted back to chambers and was told in Judge Newman’s presence that she had just fainted and could not walk without assistance. *See* ██████ Aff. [1] ¶ 6. As to a “heart attack,” the Committee quickly recognized that “heart attack” was too specific a term if

understood to refer to a myocardial infarction, and it sought information about the broader category of “cardiac event.” *See, e.g.*, May 16 Order at 4–5; R&R 81–82. [REDACTED] affidavit states that Judge Newman had a cardiac condition and “at least one cardiac-related procedure.” [REDACTED] Aff. [1] ¶ 9. When asked at oral argument before the Committee about whether Judge Newman had experienced a cardiac event and was hospitalized for it in 2021 and/or 2022, her counsel refused to say. Oral Arg. Tr. 17:23-18:5; 18:22-19:4; 20:11-19; R&R 82. The record thus does not refute the assertion of a 2022 fainting episode or the existence of a 2021 cardiac event serious enough to require a visit to the hospital or insertion of a stent or other treatment. Judge Newman presented medical evidence in both her July 5 and her August 31 submissions, yet she refused to submit any medical evidence from her cardiologist or pulmonologist regarding her cardiac events and procedures. She refused twice to interview with the Committee where she could have clarified these facts and chose not to submit her own declaration on these points.

Second, the Response is also critically wrong about the role of these two recited incidents in the March 24 Order. The two physical episodes at issue were merely possible causes of the symptoms, such as memory, confusion, and stamina problems, that were the basis for the March 24 Order. The points Judge Newman focuses on were mentioned on the first page of the order as historical background to explain why Judge Newman was, with her acquiescence, operating under a reduced caseload—a fact that (at least as of 2022) is undisputed and borne out by data from the Clerk’s Office. But the March 24 Order did not rely on the heart attack (or surgery) or fainting as the basis for identifying a complaint. To the contrary, the Order set out information about Judge Newman’s behavior (including “allegations that Judge Newman has exhibited

inappropriate behavior in managing staff” and staff concerns about, *e.g.*, her memory, confusion, and focus), noted that Judge Newman had agreed to forgo motions-panel participation and acquiesced in a greatly reduced workload, and laid out data from the Clerk’s Office showing striking deficiencies in processing cases even with a diminished workload. Whether there were particular physical causes of the symptoms, reflected in particular cardiac or fainting episodes at particular times, was not critical to the basis for the identification of the complaint, though such causes could ultimately be relevant to determining the nature, extent, and duration of any disabilities.

The Response’s criticism of the April 7 Order, which was the first Committee order to require medical examinations, is defective for at least the same reasons. The Response asserts that the Committee lacked a reasonable basis for the April 7 Order, but the core argument is that the order, which referred to the March 24 Order and did not further discuss the basis for concern about disability, was infected by the same error regarding a “heart attack” as the March 24 Order. Response 36–37 (stating that “absent these allegations, the Committee was left with nothing at all” on which to base its order for medical examinations). But as explained, that assertion incorrectly assigns the dispute about a “heart attack” a role contrary to its actual role regarding the issue of disability.

In asserting that the Committee had no other basis for its April 7 Order, the Response states that, as of April 7, the “Committee had yet to speak to any of Judge Newman’s staff.” Response 8. That is wrong. The March 24 Order makes clear on its face that, even before that Order was entered, one of Judge Newman’s chambers staff had reported troubling conduct by Judge Newman. The R&R further explains that, after the Committee was appointed on March 24, the Committee “*immediately* undertook

interviews with court staff to gather relevant information.” R&R 12 (emphasis added). And it is apparent from the sequence of the Committee’s orders that much of the information ultimately memorialized in the form of affidavits had been provided to the Committee in interviews long before the affidavits were executed. In addition, as the April 7 Order makes clear, the Committee had already engaged a consulting expert (Dr. ████████) and relayed information to him, and he had found the information sufficient to call for the medical examinations the Committee was ordering. April 7 Order at 1–2. The April 7 Order also provided Dr. ████████’s contact information so that Judge Newman or her representatives could ask him directly about the examinations and the selected providers. Judge Newman’s suggestion that the Order was based on “nothing” but the disputed “heart attack” event is contrary to the record.

In any event, even if there was some error in the March 24 and April 7 Orders regarding the factual points on which the Response focuses, it is entirely proper to require compliance with the May 16 Order, where, as shown above, there are ample bases for this later-issued order independent of any such errors. An investigation is launched on initial information, the point of the investigation is to uncover the truth, and the facts uncovered may be different from some of the initial allegations that first raised concerns, but they may be equally or even more supportive of the concerns. That is just what happened here regarding concerns about disability.

We note that the Committee did not recommend, and the Council is not considering, a misconduct charge based on refusal to comply with the April 7 Order. Instead, the Committee provided further explanations to Judge Newman in response to her objections, presented further information discovered in the investigation, and entered *new* orders that were based on a fuller record and set out

additional information in support, both regarding the medical examinations and medical records. It is the last of those new orders, the May 16 Order, that is the subject of the Committee's recommendation and is now before this Council.

Thus, after issuing an April 17 Order regarding medical records, the Committee entered an order on May 3 that detailed over several pages its reasonable basis for requiring medical examinations and certain medical records, which included the staff concerns of memory loss, confusion, lack of focus, inability to understand and execute simple tasks that she had previously been able to perform, and agitation, paranoia, and hostile behavior. May 3 Order at 3–9. Several staff indicated that the dysfunctional behaviors began over the past 1-2 years and had increased in frequency. By the time of the May 3 Order, Judge Newman had been provided a detailed account, based on information from the investigation, of the Committee's basis for ordering medical examinations and medical records.

Even the May 3 Order is not the one now at issue. The Committee received objections from Judge Newman's counsel, including that the requested medical examinations were of unknown scope or duration and that there were no defined limits on how the results would be used. May 10 Letter at 4. The Committee issued its May 16 Order to respond to those objections and include even more detail about the reasonable basis for the testing (and also further defined the required medical records and directed that they be supplied to the neurologist, not to the Committee).

The operative May 16 Order—and whether the Committee had established a reasonable basis for *that* order—is all that is material for evaluating the current issue of misconduct. Whether the record was sufficient at some earlier stage in the process does not determine the issue

before the Council concerning a new, later order. Even in administrative law, when a new order supersedes an earlier order and only the prospective demands of the new order are at issue, the agency, to support the new order, generally is “not limited to its prior reasons.” *Department of Homeland Security v. Regents of the University of California*, 140 S. Ct. 1891, 1907–08 (2020); *see also Biden v. Texas*, 142 S. Ct. 2528, 2544 (2022) (same). All the more so for an investigation, which, in the ordinary course of pursuing its aim of uncovering the truth, will lead to changes in the investigators’ actions according to changing information. That aspect of an investigation is particularly important for a disability investigation, in which a complaint can be expected to set out reasons for concern about present continuing abilities, rather than specific past-conduct “charges” to be proved in ordinary misconduct proceedings. Here, the “misconduct” is the stymieing of an underlying disability inquiry.

If the approach suggested in the Response were correct, then if a special investigating committee under the Act ever acted too swiftly in ordering some investigative step, but responded to objections, developed further information, and then reissued its order based on a more developed record, the later order would somehow still be measured against the more limited record available at an earlier time. That cannot be the rule. Responding to objections from a subject judge and establishing additional information justifying investigative steps are exactly what special investigating committees should do.

2. The Criticisms of Other Actions by the Chief Judge or Special Committee Leading to and in the Investigation Do Not Undermine the Duty to Comply with the May 16 Order

The Response seeks to call into question the duty to comply with the May 16 Order by attacking an assortment of actions by the Chief Judge or the Committee to paint a picture of hostility or bad faith. The Council rejects these attacks and the whole picture.

a. The Response claims that Judge Newman was not given the Rule 11(f) notice and opportunity to respond to the Complaint the Chief Judge was proposing to identify and that “had such an opportunity been provided, the March 24 Order could have avoided the factual errors, and there would be no predicate for the investigation in the first place.” Response 90. But as the attached emails demonstrate, the Chief Judge did provide the proposed Complaint to Judge Newman on March 17 (a week before it was eventually filed), asked her to review it, and offered to meet with Judge Newman to discuss it. Ex. 1. Judge Newman refused. The accusation of denial of notice and opportunity to respond is false.

b. More generally, we find that the email communications between the Chief Judge and Judge Newman during the period March 9 through March 24 refute the Response’s accusation of hostility. They paint a picture of a Chief Judge trying in a respectful manner to meet with Judge Newman to discuss the troubling concerns that had been raised. They reveal admiration of Judge Newman and concern for her legacy. They show a good faith effort by the Chief Judge to pursue the judiciary’s customary means of engaging in informal discussions when concerns about a relevant disability arise and become so strong that it is no longer responsible to avoid the difficult topic of whether the judge at issue should step back from the job.

In early March 2023, the information about disability concerns was at the point where identifying a complaint to launch an investigation under Rule 5 was called for in

order to fulfill the clear purposes of the JC&D Act—unless the disability concerns were dispelled or made moot by a voluntary resolution. Judge Newman’s refusal of engagement made the launch of the formal proceeding unavoidable. The Chief Judge’s communications with Judge Newman show no hostility or bad faith. They reflect good faith, and human sympathy in fulfilling a sad, painful responsibility.

c. The Response asserts that, in a slightly earlier conversation in March 2023, the Chief Judge told Judge Newman that taking senior status was “non-negotiable.” Response 4; *id.* at 84. The Response itself puts quotation marks around the term but cites no source, so it appears not to be reporting a word used but instead to be characterizing what Judge Newman felt, or recalls, was being conveyed. Regardless, for the Council’s decision, it is unnecessary to establish whether the word was used or even whether the thought was conveyed. Even if so, there would be no bad faith in indicating that the disability concerns were so serious that taking senior status was the minimum needed to avoid an investigation. Such a statement does not prejudice the results of the investigation.

d. The Response attacks a decision by the Chief Judge made in February 2023, before the events of March 2023 precipitated the current proceeding. Over three pages, the Response argues that it was improper for the Chief Judge, in February, to not calendar Judge Newman for the April sitting because of the Federal Circuit rule (Clerical Procedure # 3 ¶ 15) that a judge should not be assigned to a new sitting when the judge has a backlog of assigned opinions not circulated within a specified period. Response 80–83. The Response’s argument is about one of the backlog cases, which was undeniably very old and had been submitted on the briefs without oral argument and therefore was assigned to Judge Newman (by herself) some weeks before

the date it appeared on the court’s calendar. The Response prefers to start the count for the Clerical Procedure period, not from the date of assignment, but from the later calendar date; but starting the count with the actual assignment is obviously reasonable, not at all suggestive of bad faith. Decisively, moreover, Judge Newman’s judicial assistant had emailed the Chief Judge in February to state that it looked like sitting in April was barred by the Clerical Procedure. Ex. 11. The Chief Judge followed the view communicated by Judge Newman’s chambers. When the April-sitting assignments were sent to all judges in mid-February, it was immediately apparent that Judge Newman was not being assigned to sit. Yet Judge Newman never objected—just as she never objected when, in early 2021, she stopped being put on motions panels (a regular active judge’s duty) or when, around the start of 2022, her panel assignments were substantially reduced in number. There is no basis for finding bad faith in the Chief Judge’s February 2023 assignment decision.

e. The Response suggests that hostility or bad faith is evinced in the Committee’s partial denial of an extension request during the investigation. When the Committee issued its May 16 Order, it set a deadline of May 23 for Judge Newman to respond—not for her to undergo the examinations or supply the records or sit for the interview. It explained the statutory bases for expedition, May 16 Order at 24; *see* 28 U.S.C. § 353(c) (expedition directive for Special Committee); *id.* § 352(a) (expedition directive for Chief Judge in initial review); *id.* § 353(a) (promptness directive for Chief Judge to appoint Special Committee); H.R. Rep. 96-1313 at 11, and it noted the difficulty of arranging appointments with examiners. May 16 Order at 25. On May 20, Judge Newman’s counsel asked for a 16-day extension, explaining that he had flown to Israel on May 16 for “family functions,” including “a traditional Jewish baby-naming

ceremony.” Dolin May 20 Letter. The Committee extended the deadline to May 26, noting the importance of expedition and that this was the third order concerning medical examinations. May 22 Order at 1–4. Judge Newman’s counsel met the deadline with a three-page response, filed May 25, refusing compliance with the May 16 Order.

The Response now observes that May 26 was “a major Jewish festival of Shavuot (‘Festival of Weeks’),” evidently suggesting insensitivity on the Committee’s part. Response 18 n.15. But the Response’s suggestion of insensitivity is baseless. The extension request made no mention of the holiday, which was unknown to the Committee. The Committee’s partial denial of the extension properly served the statutory expedition policy and is not evidence of hostility or bad faith.

f. The Response points to the July 13 oral argument (hearing) and declares: “It should not go unsaid that the hearing was conducted in an extraordinarily and uniquely hostile fashion. None of the attorneys appearing at the hearing has ever before experienced such a level of hostility and disrespect from any judge at any level of the judiciary.” Response 20 n.16. The Council has read the transcript of the hearing and/or listened to the audio recording. Exs. 14, 15. We conclude that this accusation is baseless. Pressing for focus on the matters viewed by the bench as of likely importance, and for answers actually responsive to the bench’s questions, is not reflective of hostility or disrespect, but of the proper effort to advance understanding during the limited time counsel has available. The Response’s accusation on this point is completely meritless, as well as inappropriate.

g. Judge Newman claims that when her staff asked to reschedule interviews, the Committee refused. Response 10. But only one of Judge Newman’s staff asked to

reschedule, and the Committee agreed to reschedule to the day he chose. *See* Ex. 16.

h. The Response complains that the Committee subpoenaed Judge Newman’s career clerk to appear for a formal deposition within 48 hours, with “no reason to believe the career clerk would decline a simple request for an interview.” Response 96. But the timing reflected the proper effort to follow the statutory policy of expedition. And the Committee had reason for the formality. Even before the career clerk’s broad refusal to answer questions at the deposition, the Committee reasonably doubted the career clerk’s likely cooperation with the present inquiry, as the career clerk had just been non-cooperative with EDR inquiries. *See* ██████████ Aff. [10] ¶¶ 1–4. Moreover, the Council sees nothing improper about the Committee’s questioning at the deposition when the career clerk repeatedly asserted the privilege against self-incrimination to refuse to provide almost any information.

i. The Response suggests bad faith or hostility in the Committee’s response to a request for Clerk’s Office data in mid-August, after issuance of the R&R. Response 92–94. We find that the Committee had ample reasons for refusing the request—that it was untimely, waived, and unjustified by any concrete showing of problems in the already-furnished data that would be material to the specific issue presented, namely, whether the May 16 Order was justified and non-compliance with it constituted misconduct. The Council sees no bad faith or hostility in that ruling.

* * *

In short, the Council sees no merit in the picture painted by the Response of bad faith or hostility by the Chief Judge or the Committee. That picture is therefore a diversion from the proper inquiry, namely, the basis for the

May 16 Order itself and the importance of complying with it under the Act and Rules.

IV. The Refusal to Comply with the May 16 Order Constituted Serious Misconduct

Judge Newman committed misconduct by refusing to comply with the May 16 Order for medical examinations, medical records, and an interview, and her refusal to comply constituted serious misconduct. Rule 4(a)(5) expressly provides that “[c]ognizable misconduct includes refusing, without good cause shown, to cooperate in the investigation of a complaint.” Judge Newman’s refusal to cooperate was a serious matter because it prevented the Committee from being able to fulfill its assigned task under the Act—namely, making an *informed* assessment (and recommendation for the Judicial Council) about whether Judge Newman suffers from a disability.

That is a serious matter because it prevented the proper functioning of the self-policing mechanism that Congress established to ensure that the judiciary would effectively have authority to keep its own house in order. As relevant here, the Act creates a mechanism, important in a system that provides judges life tenure to ensure independence, to address the unfortunate reality that some judges may become unfit to perform the duties of their office. The Act gives the judiciary the responsibility for regulating itself in that regard through investigations such as this. Accordingly, all judges have an obligation to cooperate with proceedings under the Act to ensure that self-policing by the judiciary can function properly. Refusing to cooperate without adequate justification—as Judge Newman has done here—brings the statutory mechanism for addressing disability to a grinding halt and thereby undermines the interests of litigants, employees, the public, and the judiciary in having that mechanism work.

V. The Renewable One-Year Suspension from New Cases is an Appropriate Sanction

We find that Judge Newman's assertion that a one-year suspension from case assignments would be too severe a sanction is misplaced. As explained in the R&R, the sanction must be sufficient to convey the seriousness of misconduct that has prevented the proper functioning of the self-policing mechanism Congress created for the judiciary. And the renewable character, if circumstances continue to justify the suspension, is essential to the purpose: to put the Act process back in motion rather than leave it thwarted in the face of reasonable concerns about disability.

Judge Newman's arguments concerning *Adams* also draw the wrong lessons from that case. *See* Response 106. It is true that, upon remand from the JC&D Committee, the special committee in *Adams* recommended only a six-month suspension based on Judge Adams' misconduct in refusing to comply with orders for medical examinations. There, however, the JC&D Committee had just vacated the original sanction imposed by the Sixth Circuit Judicial Council because the council did not have any basis for finding that the concerns about a disability in that case affected Judge Adams' "capability of discharging his adjudicative responsibilities," and instead were "limited to Judge Adams's conduct in the context of the court's internal administrative responsibilities." *Adams* at 37. Here, in contrast, the evidence developed by the Committee calls into question Judge Newman's ability to carry out the case-deciding function at the level and with the timeliness required of an active judge. The concerns about disability are not, as in *Adams*, wholly unconnected to Judge Newman's role in deciding cases. To the contrary, the evidence shows that paneling Judge Newman on cases without getting to the bottom of her potential disability will have a direct and deleterious effect on the efficient administration of the

business of the Court. In addition, in *Adams*, the Sixth Circuit Judicial Council had originally decided that Judge Adams' misconduct (which included both refusing to comply with an order for medical examinations and a particular incident with a show cause order) warranted a suspension from new cases for *two* years and the reassignment of his entire docket of pending cases. See Order of June 27, 2018, at 2, *In re Complaint of Judicial Misconduct*, No. 06-13-90009 (Sixth Circuit Judicial Council). Given the different nature of the disability concerns raised in this case, and the extensive evidence showing their direct connection to Judge Newman's "adjudicative responsibilities," we conclude that a one-year suspension—in between the original two-year sanction and the later recommended six-month sanction in *Adams*—is warranted.

To the extent Judge Newman points to the length of suspensions issued in other misconduct cases, those decisions are less relevant comparators. They involved sanctions as punishment for misconduct such as harassment and unwanted physical advances (or crimes such as perjury or allowing counsel to make false factual assertions in the proceeding itself). Those matters do not provide a relevant benchmark for a case such as this involving (i) a suspected disability that directly affects a judge's adjudicative responsibilities and (ii) thwarting the process for fulfilling the duty to get to the bottom of (and address) the suspected disability.

Judge Newman is also incorrect in arguing that the Council lacks authority to suspend her from sitting on cases en banc. See Response 113. Section 354(a)(1)(C) of the Act says that the Council "shall take such action as is appropriate to assure the effective and expeditious administration of the business of the courts within the circuit," and section 354(a)(2)(A)(i) gives one example in "may" language that does not exhaust the scope of the broader "shall": the Council may order that "no further cases be

assigned” to a judge who has committed misconduct or who has been found to suffer a disability. 28 U.S.C. § 354(a)(1)(C), (a)(2)(A)(i). The provisions authorize the judicial council (even obligate it where appropriate to ensure effective and expeditious judicial administration) to suspend the judge from hearing cases of any sort. The general directive in 28 U.S.C. § 46(c) that the court en banc “shall consist of all circuit judges in regular active service” cannot trump that more specific authority and obligation granted to the Council for addressing situations of misconduct or disability. *See generally, e.g., Corley v. U.S.*, 556 U.S. 303, 316 (2009) (noting that “a more specific statute will be given precedence over a more general one”). Judge Newman can, at any time, end this suspension, by complying with the May 16 Order and allowing the Committee to complete its investigation.

* * *

The Council has considered all of Judge Newman’s remaining arguments and find them to be without merit.²⁶

Unanimous Judicial Council Order

The Judicial Council has unanimously determined, based on the Committee’s R&R and underlying evidence, that there is an adequate basis for deciding whether Judge Newman’s refusal to cooperate with the Committee’s order for medical evaluations, medical records, and an interview constitutes sanctionable misconduct. *See* Rule 20. After due consideration of these materials, the Judicial Council **FINDS:**

²⁶ The Council sees no need for oral argument in this matter. Pursuant to Rule 20(a) Judge Newman was provided an opportunity to submit argument in writing and submitted a 120-page brief.

(1) The evidence establishes reasonable concerns that Judge Newman suffers from a disability preventing her from effectively discharging the duties of her office. In light of the evidence, the Committee had a reasonable basis on May 16 to require Judge Newman to undergo the specified medical evaluations and produce the specified medical records and to request that she sit for the specified interview.

(2) The Judicial Council is being deprived of information that is important to a fully informed determination with reasonable medical certainty of whether Judge Newman has a disability that renders her unable to effectively discharge the duties of her office as an active judge because she has refused to undergo the ordered medical evaluations, refused to produce relevant medical records, and refused to sit for an interview. *See* Rule 4(c).

(3) Judge Newman has not established good cause for her failure to cooperate with the Committee's investigation through her refusal to undergo the ordered testing, produce medical records, or sit for an interview.

(4) Judge Newman's refusal, without good cause, to cooperate with the Committee's investigation constitutes serious misconduct, as it has prejudiced the effective and expeditious administration of the business of the courts. Rule 4(a)(5).

Given these findings, the Council **ORDERS**:

(1) Judge Newman shall not be permitted to hear any cases, at the panel or en banc level,²⁷ for a period of one year beginning with the issuance of this Order, subject to consideration of renewal if Judge Newman's refusal to cooperate continues after that time and to consideration of

²⁷ This includes all cases in which oral argument has not yet occurred.

modification or rescission if justified by an end of the refusal to cooperate.

(2) The Committee shall maintain jurisdiction over this matter.

SO ORDERED: September 20, 2023.

United States Court of Appeals for the Federal Circuit

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

IN RE COMPLAINT NO. 23-90015

Before the Judicial Council of the Federal Circuit

PER CURIAM.

STATEMENT OF RIGHTS UNDER RULE 20 AND 21

Pursuant to Rule 20(f) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, the Judicial Council notifies Judge Newman that she is entitled to a right to review of the Council's decision as provided in Rule 21(b). The Council will transmit the order and memoranda incorporated by reference in the order to the Committee on Judicial Conduct and Disability for review in accordance with Rule 21. Judge Newman may file a Petition for Review to the Committee on Judicial Conduct and Disability. The Rules regarding the deadline and page limits for the Petition for Review may be found in Rule 22.

Redacted Supporting Attachments¹

¹ The attachments have been redacted and reordered to protect confidentiality.

Exhibit 1

From: [Chief Judge Kimberly A. Moore](#)
To: [Judge Pauline Newman](#)
Subject: Fwd: Publication of AIPLA QJ 50-4 Anniversary Issue
Date: Thursday, March 9, 2023 8:02:50 PM
Attachments: [50-4 Anniversary Issue.pdf](#)

I hope you will take a moment to read my article in the AIPLA. I talk extensively amount how much I respect you and what you have meant for me and our court. I recognize that you have been in my words the heroine of the patent system. Please let us celebrate this amazing career and life you have lived. Think very hard about the difference you have already made to people like me. Your legacy will not be any particular case but rather the impression you leave behind.

With affection and admiration,
Kimberly

Get [Outlook for iOS](#)

From: [Chief Judge Kimberly A. Moore](#)
To: [Judge Pauline Newman](#)
Subject: meeting
Date: Wednesday, March 15, 2023 11:29:00 AM

Polly,

I think we should meet soon to talk. As you know, there is a process underway and there is both an informal and a formal component to this process. I continue to hope that you and I can reach an agreement informally. Can we set a time on March 24 or March 29? It would be just the two of us.

Kimberly

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

From: [Judge Pauline Newman](#)
To: [Chief Judge Kimberly A. Moore](#)
Subject: RE: meeting
Date: Thursday, March 16, 2023 11:40:09 AM

Kimberly,
I am willing to talk. I request that you restore me to the May hearing calendar before we meet.
Polly.

From: [Chief Judge Kimberly A. Moore](#)
To: [Judge Pauline Newman](#)
Subject: RE: meeting
Date: Thursday, March 16, 2023 12:07:00 PM

Polly,

The May hearing calendar is already set. And I know you are aware, the judicial council voted that you should not hear new cases during this process. It is my hope that you and I can meet soon to try to resolve the process. Please let me know what day and time you prefer March 24 or March 29 or if you want to meet sooner, I will be in tomorrow March 17.

Kimberly

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

From: [Chief Judge Kimberly A. Moore](#)
To: [Judge Pauline Newman](#)
Subject: RE: meeting
Date: Thursday, March 16, 2023 4:43:00 PM

I understand you might be in tomorrow. I will be here. Please let me know if you'd like to meet.

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

From: [REDACTED]
To: [Chief Judge Kimberly A. Moore](#)
Cc: [Judge Pauline Newman](#)
Subject: PN
Date: Friday, March 17, 2023 11:21:45 AM

Chief,

Judge Newman asked me to convey that she is quite busy today and must leave early. Therefore, she does not want to be disturbed.

Kind Regards,

[REDACTED]
Law Clerk to the Honorable Pauline Newman
U.S. Court of Appeals for the Federal Circuit
717 Madison Place NW, Washington, DC 20439
[REDACTED]

From: [Chief Judge Kimberly A. Moore](#)
To: [Judge Pauline Newman](#)
Subject: CONFIDENTIAL
Date: Friday, March 17, 2023 12:00:00 PM
Attachments: [JMD draft order \(3.16.2023\).docx](#)

Polly,

It was my hope that we would be able to talk about this, but your refusal to agree to a meeting or to respond to your colleagues' calls or emails has left me with no choice but to email you the attached order. I have not formally docketed this order yet. I will do so on Friday, March 24 at 9am. I wanted to give you an opportunity to review the complaint prior to docketing it and beginning the formal process. If you wish to discuss this with me prior to the formal docketing, I am available to do so and continue to hope that informal resolution might be possible. Because of the sensitive nature of the document, I will send you a separate email with the password for the document.

Kimberly

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

Exhibit 2

**MANUAL FOR THE ADMINISTRATION AND SCORING OF
THE MODIFIED MINI-MENTAL STATE (3MS) TEST**

(Updated May, 1996)

Evelyn Lee Teng, Ph.D., and Helena Chang Chui, M.D.

(email: eteng@usc.edu)

Department of Neurology

University of Southern California Keck School of Medicine

2025 Zonal Avenue, Los Angeles, CA 90033, U. S. A.

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from Dr. Evelyn Teng.**

Introduction

Main differences between the 3MS and the MMSE

The Modified Mini-Mental State (3MS) test has been designed to enhance the usefulness of the popular Mini-Mental State Examination (MMSE) (Folstein, Folstein, and McHugh, 1975). Compared with the MMSE, the 3MS has more standardized administration and more graded scoring; it also assesses a broader variety of cognitive domains and covers a wider range of difficulty levels. The 3MS can extract more information about the subject's cognitive status than the MMSE; it is also more sensitive than the MMSE in detecting within-individual changes over time (Teng and Chui, 1987).

The 3MS is not just a screening test for dementia

Neither the MMSE nor the 3MS has been designed primarily as a screening tool for dementia. For this purpose the 3MS Test is only marginally better than the MMSE (Tombaugh, McDowell, Kristjansson, and Hubleby, 1996); as a matter of fact, comparable screening efficacy can be achieved with the use of a much shorter test, a short version of the Cognitive Abilities Screening Instrument, or CASI-Short (Teng, Hasegawa, Homma, et al., 1994). Although many of the items in the MMSE and the 3MS are not sensitive for detecting dementia in its early stage, they are useful for other purposes, including that of monitoring the progression of dementia to its middle and late stages.

This Manual contains answers to many frequently asked questions

This manual has been prepared after more extensive use of the 3MS by us and others since the first article on the 3MS was published (Teng and Chui, 1987). In this manual we have incorporated answers to many questions that frequently arise during the administration and scoring of the 3MS. Minor changes have been made from the original article. For example: the order of asking the time and place of birth has been switched; the three choices for spatial orientation have been modified. Wherever information provided in this manual differs from that in the original article, follow this manual.

Exhibit 3

From: Judge Pauline Newman [REDACTED]

Sent: Monday, May 8, 2023 3:40 PM

To [REDACTED]

Subject: Re: Governance and Education Travel Report (fka Non-Case Related Travel Report) Report Due May 15

[REDACTED] since I don't at present have a JA, by action of the Chief Judge, please advise how the court proposes to assist in handling these reporting requirements.

PN

Sent from my iPhone

On May 8, 2023, at 4:23 PM, [REDACTED] wrote:

Judge Newman,

Almost all the senior judges enter this information in Infoweb themselves and many of them do not have secretarial support. This is a mandatory report required by all judges; only you have your information about your travel. You will need your credentials for [Infoweb](#), and here are the [instructions](#) on how to enter the data. It is a very user-friendly system. Perhaps one of your law clerks could assist you. If your staff has any questions, I'd be happy to answer them.

Best,

[REDACTED]
Chambers of Chief Judge Kimberly A. Moore
U.S. Court of Appeals for the Federal Circuit
717 Madison Place NW
Washington, DC 20439
[REDACTED]

From: Judge Pauline Newman [REDACTED]
Sent: Monday, May 8, 2023 5:11 PM
To: [REDACTED]
Cc: Judge Pauline Newman [REDACTED]
Subject: Re: Governance and Education Travel Report (fka Non-Case Related Travel Report) Report Due May 15

[REDACTED], I do not choose to do secretarial work, whether or not any senior judges are obliged to do so. My JA routinely keeps these records and fills out these forms for my review. It appears that the court chooses to continue to deprive me of routine services.
PN

Sent from my iPhone

From:

Sent: Monday, May 8, 2023 5:21 PM

To: Chief Judge Kimberly A Moore

Subject: Fwd: Governance and Education Travel Report (fka Non-Case Related Travel Report) Report Due May 15

Chief,

See PN's response below.



From: Chief Judge Kimberly A. Moore [REDACTED]

Sent: Tuesday, May 9, 2023 10:21 AM

To: [REDACTED]

Subject: HR question

[REDACTED]

Can you please check in with Judge Newman because weeks ago her requests for judicial assistance were approved? Why hasn't this moved forward? As I understand it:

April 19: [REDACTED] resigned from Judge Newman's chambers on April 19, 2023 and asked that there be no further communication between him and Judge Newman. He was assigned to our Clerk's Office where he now works.

Judge Newman requested that she be permitted to bring back her former judicial assistant, [REDACTED], who her chambers claimed was ready and willing to come back. As I understand it, you contacted the AO to determine how to bring back [REDACTED] (a retired annuitant) in a manner which would not diminish her retirement annuity. I agreed to petition the AO to waive the salary set-off that [REDACTED] would face as a reemployed annuitant. This way [REDACTED] would receive her full retirement annuity and get paid for any hours she worked at the court.

April 24: I understand you to have communicated the approval to bring [REDACTED] back to Judge Newman on April 24 including the fact that [REDACTED] will be brought back in a manner which allows her to keep both her full retirement annuity and get paid.

April 27 (9:43 am): I sent Judge Newman an email (copying you) which approved her request to advertise to hire a permanent paralegal/assistant.

Given that her request for temporary assistance was approved 16 days ago (just 5 days after her assistant resigned) and that her request to advertise for a permanent replacement was approved 13 days ago, I am confused about her below claims that either I or the court continue to deprive her of what she refers to as secretarial services.

Can you update me on this process and reach out again to Judge Newman?

With gratitude,

Kimberly Moore

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

On May 9, 2023, at 1:10 PM, [REDACTED] wrote:

Chief Judge Moore,

I have been in communication with Judge Newman regarding both the temporary rehire of [REDACTED] and the recruitment for a permanent fill of the JA/paralegal position in her chambers for several weeks. I am currently at a standstill with both [REDACTED] rehire and the recruitment, as I am awaiting responses/approvals from Judge Newman.

Specifically, I am waiting for Judge Newman to confirm specific details of [REDACTED] return and provide approval for me to begin the process of seeking a salary offset waiver from the AO. My last email to Judge Newman regarding [REDACTED] was on May 3rd and I have not yet received a response from her. [REDACTED] called me yesterday with HR questions specific to returning to the court as a rehired annuitant and I am expecting a follow-up email from her. I am also waiting for Judge Newman to approve the draft JA vacancy announcement for her chambers position. My last email to her regarding this matter was on May 2nd and I have not yet received a response from her.

Below is timeline of my communication with Judge Newman regarding both matters. Communications in blue primarily relate to [REDACTED] rehire and items in red primarily relate to the recruitment for a permanent fill.

Monday, April 24, 2023

- 2:20 PM: Telephone call with Judge Newman to discuss the temporary rehire of [REDACTED] which you approved for a period of up to 90 days, with the possibility of an extension. I also notified her of your approval to seek a waiver of the salary offset that rehired annuitants are subject to, so that [REDACTED] could potentially receive her OPM annuity as well as a full salary for time worked for the court. Judge Newman denied my request to reach out to [REDACTED] to begin the rehire process and stated that I was not to contact [REDACTED] until the recruitment process begins for a permanent replacement for her JA/paralegal vacancy.
- 4:09 PM: I sent a follow-up e-mail to Judge Newman shortly after our call to restate the approval to temporarily rehire [REDACTED] and to again offer to reach out to [REDACTED].
- 4:53 PM: Judge Newman responded by email indicating that she requires a permanent as well as temporary solution to her judicial needs. No response to my inquiry about contact [REDACTED].

Tuesday, April 25, 2023

- 2:49 PM: I responded to Judge Newman's last email and again asked if I could begin the process of bringing back [REDACTED] to assist her in chambers.
- 3:53 PM: Judge Newman responded by asking me to assure her that the permanent JA recruitment will be listed promptly.

Wednesday, April 26, 2023

- 3:24 PM: I responded to Judge Newman and explained that I was not in the position to guarantee the posting of the permanent position due to the judicial council vote prohibiting her from hiring any permanent staff and again asked for permission to move forward with [REDACTED].
- 3:55 PM: Judge Newman responded stating that the court has an obligation to provide her "statutory judicial services" and that she understands my email to mean that the judicial council continues to refuse to allow her JA position to be filled.

Thursday, April 27, 2023

- 10:25 AM: As a follow-up to the email that you sent to Judge Newman at 9:43 AM, which authorized the recruitment for a permanent replacement for [REDACTED], I sent an email to Judge Newman containing a draft vacancy announcement for a chambers paralegal. I indicated that I would get the announcement posted as soon as she approved it. I also asked if I could reach out to [REDACTED] to begin the process of her temporary rehire.

Sunday, April 30, 2023

- 6:35 PM: Judge Newman responded to my email asking for a copy of the vacancy announcement that was used for the recruitment for her chambers paralegal in 2021. Judge Newman also stated that she did not want [REDACTED] to return as a re-employed annuitant but rather as a contractor.

Monday, May 1, 2023

- 3:25 PM: I sent Judge Newman a copy of the 2021 paralegal vacancy announcement, as requested. My email also explained the AO procurement regulations related to contract employees and provided links to the regulations. I explained that the only way for [REDACTED] to return as a contractor would be through a temporary staffing agency contracted by the court.
- 7:35 PM: Judge Newman emailed with a question about contracting agencies. She also expressed concern regarding [REDACTED] facing a salary offset as a reemployed annuitant and provided comments regarding the delay in recruiting for her permanent position and the oral argument paneling for July.

Tuesday, May 2, 2023

- 9:58 AM: I responded to Judge Newman reminding her that on April 24th, I notified her that you agreed to seek approval from the Director of the AO to waive the salary offset for [REDACTED]. I clearly explained again that the waiver would allow [REDACTED] to receive her full pension AND salary for hours worked at the court. I stated that I was "happy and ready to assist with the waiver request process."
- 10:32 AM: Judge Newman emailed "To be clear: Are you saying she would receive no additional pay for working at the court?"
- 10:40 AM: I wrote to Judge Newman explaining again that [REDACTED] would receive her full annuity (pension payment), as well as pay for hours worked. I asked the judge to provide the following information so that I could complete the waiver request form: 1) whether [REDACTED] would be full-time or part-time; 2) approximately how many hours per week [REDACTED] will work; and 3) the effective date of [REDACTED]'s return.
- 11:04 AM: Judge Newman wrote to ask if [REDACTED] would be paid for her work at the court and what would happen to her pension. She indicated that she wants [REDACTED] to work "as the need arises" and that [REDACTED] to be paid for days worked. She also requested to see the waiver form.
- 11:18 AM: I responded to Judge Newman with pay rate details, restated that there would be no effect on her pension, and indicated that [REDACTED] could work on an intermittent basis. I explained the process for reporting [REDACTED]'s hours to HR. I also provided a draft of the waiver form, detailed the additional information that I needed Judge Newman to provide, and provided next steps.
- 1:27 PM: Judge Newman sent an email requesting that I use a linked vacancy announcement for a JA from the DC Court of Appeals for her recruitment. The link did not work and the announcement was no longer on the DC Court of Appeals site.
- 2:05 PM: I emailed Judge Newman to let her know that the link was broken. I asked her to confirm that she would like to hire a JA rather than a chambers paralegal. I provided a draft of an updated vacancy announcement with the appropriate duties and requirements for a JA and asked her to review for posting.
- 9:35 PM: Judge Newman responded inquiring again whether [REDACTED]'s pension annuity would be affected and whether she would be separately paid for time worked at the court. Judge Newman asked about how [REDACTED] would be paid for hours worked at the court, whether [REDACTED] would be eligible for travel reimbursement, and if there was any additional information the judge needed to know.

Wednesday, May 3, 2023

1. 9:13 AM: I responded to Judge Newman with assurance that, if approved by the AO, [REDACTED]'s annuity payments will continue uninterrupted and that in addition to her annuity she will also receive a separate payment for her earnings for whatever hours she works for the judge. I further explained the method and timing of payments and notified Judge Newman that [REDACTED] is not eligible for travel reimbursement.

Monday, May 8, 2023

2. 4:22 PM: I spoke with [REDACTED] by phone, returning a voice mail that she left for me at 3:30 PM. [REDACTED] had a number of questions regarding the effect on her pay and benefits of returning as a rehired annuitant. I provided answers to the questions I was able to and promised to follow-up with answers to those questions that required more research. [REDACTED] stated that she would prefer to have all of the answers in writing and said that she would send me an email with all of her questions.

Please let me know if you have any questions.

Thanks,

[REDACTED]

[REDACTED] Human Resources
U.S. Court of Appeals for the Federal Circuit
[REDACTED]

From: Judge Pauline Newman [REDACTED]
Sent: Tuesday, May 9, 2023 1:42 PM
To: [REDACTED]
Cc: Chief Judge Kimberly A. Moore [REDACTED]
Subject: Re: HR question

Thank you, [REDACTED] I have been awaiting word that Judge Moore has approved the hiring of a permanent JA on posting of that opening. If I missed receipt of notice of such approval, please resend.

PN

Sent from my iPhone

From: [REDACTED]

Sent: Tuesday, May 9, 2023 2:38 PM

To: Judge Pauline Newman [REDACTED]

Cc: Chief Judge Kimberly A. Moore [REDACTED]

Subject: RE: HR question

Hi Judge Newman,

The Chief gave approval to recruit for the permanent refill of your JA/paralegal position on April 27th. Please see the email attached from the Chief at 9:43AM on that date where she states that "HR will begin the process of posting for a replacement." Shortly after the Chief's email, I followed-up with an email sent directly to you on the same date at 10:23 AM (also attached) letting you know that in light of the Chief's approval I was sending along a draft vacancy announcement for your review/approval and that once the announcement was finalized I would post it publicly.

After the two emails attached and referenced above, you and I exchanged several emails regarding the announcement (highlighted below). The last email in this exchange is an email I sent to you on May 2nd, in which I attached a draft announcement for a JA rather than a paralegal and asked that you review and approve so that I could move forward and post it.

[REDACTED]

[REDACTED]

Assistant Circuit Executive for Human Resources
U.S. Court of Appeals for the Federal Circuit

[REDACTED]

From: Judge Pauline Newman [REDACTED]

Sent: Tuesday, May 9, 2023 3:48 PM

To: [REDACTED] Chief Judge Kimberly A. Moore [REDACTED]

Cc: Judge Pauline Newman [REDACTED]

Subject: RE: Judicial assistant and law clerk positions

Yes indeed; this was the reason for my uncertainty. Authorizing “beginning the process of posting” is not the same as authorizing hiring the replacement. I ask Judge Moore to confirm that she authorizes hiring the replacement, not just beginning the process of posting.

Similarly, I ask Judge Moore to confirm that there are no obstacles to my proceeding with hiring a fourth law clerk.
PN

From: [Chief Judge Kimberly A. Moore](#)
To: [REDACTED]; [Judge Pauline Newman](#)
Subject: RE: Judicial assistant and law clerk positions
Date: Tuesday, May 9, 2023 8:40:17 PM
Attachments: [image001.png](#)
[image002.png](#)

Judge Newman:

There has been nothing uncertain or ambiguous in the communications with you concerning hiring a permanent replacement for your JA/paralegal. On April 27, 2023, emails both from me and from [REDACTED] made clear that I had authorized hiring a permanent replacement. The only reason that process has not moved forward is that you have failed to approve any of the versions of the vacancy announcement that [REDACTED] has transmitted for your review.

Specifically, in an email at 9:43 am on April 27, I asked you to accept the court's repeated offer to bring in a temporary assistant and also explained that HR would begin the process of posting for a permanent replacement. Posting for a replacement necessarily indicates that hiring has been authorized, it makes no sense to suggest that the court has authorized you to publicly advertise that you are hiring for a vacant position if there is not, in fact, authority to hire for that position. Less than an hour after my email, at 10:25 am, [REDACTED] sent you an email with a draft of the vacancy announcement. Her email made it clear that the full hiring process had been authorized as she anticipated later steps in the process and asked you how you would like to receive the packages for qualified applicants.

On Sunday April 30, 2023, at 6:35 pm you responded to [REDACTED]. You did not raise any concern that there was some uncertainty as to whether hiring a permanent replacement had actually been authorized. Instead, you asked for a copy of the vacancy announcement that had been used to recruit a paralegal for your chambers in 2021. In several further email exchanges with [REDACTED] you went back and forth over the draft vacancy announcement until [REDACTED] informed you by email of May 2, 2023 at 2:05 pm that a link you had sent her (showing a vacancy announcement at the D.C. Court of Appeals) was not working. [REDACTED] included an updated draft of the vacancy announcement and asked you to approve it for posting. You failed to respond to that request and [REDACTED] was unable to move forward. [REDACTED] has repeatedly sought approval from you to move forward with the temporary service you requested and the permanent service you requested. Any failure to acquire these services for you is due to your failure to authorize [REDACTED] to move forward.

If you wish to hire a permanent JA/paralegal, please review and approve the vacancy posting that [REDACTED] has sent to you.

Kimberly Moore

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

Exhibit 4

From: [Chief Judge Kimberly A. Moore](#)
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: [REDACTED]
Date: Wednesday, April 19, 2023 3:48:00 PM

Effective immediately, [REDACTED] is no longer an employee of the Newman chambers. He will no longer answer Judge Newman chambers phone lines or have access the chambers Y drive or receive emails to -PN. [REDACTED] remains available to assist with matters of transition and has prepared a transition memo which will be sent to chambers by [REDACTED]. There should be no direct communication from any member of the Newman chambers including the judge to [REDACTED]. All communication with [REDACTED] from any member of the Newman chambers whether by email, phone, teams or otherwise should be directed exclusively to [REDACTED] who will then relay the information to [REDACTED].

Kimberly Moore

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

Exhibit 5

From: Judge Pauline Newman
Sent: Wednesday, April 19, 2023 4:29 PM
To: Chief Judge Kimberly A. Moore
Cc: [REDACTED]
Subject: Re: [REDACTED]

I agree that this is appropriate. Please process [REDACTED] departure expeditiously.

Sent from my iPhone

On Apr 19, 2023, at 3:49 PM, Chief Judge Kimberly A. Moore [REDACTED] wrote:

Effective immediately, [REDACTED] has resigned from the Newman chambers. [REDACTED] has asked that no person in the Newman chambers including the Judge should communicate with him in any manner. I instruct the chambers that [REDACTED] request for no contact must be followed. [REDACTED] has removed his personal items from the Newman chambers. IT has been instructed to remove [REDACTED] access to the chambers Y drive and from the -PN distribution list.

Kimberly Moore

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

Exhibit 6

From: Chief Judge Kimberly A. Moore

Sent: Tuesday, April 4, 2023 5:37 PM

To: Judge Pauline Newman [REDACTED]

Subject: [REDACTED]

Judge Newman,

A concern by a member of your staff has been brought to my attention. I understand that your law clerk [REDACTED] has been contacting your paralegal in the middle of the night to perform some work-related and some personal tasks for her. I further understand that he has let [REDACTED] 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 [REDACTED] supervisor to ensure that this uncomfortable situation does not continue. Can you please confirm receipt of this message?

Kimberly Moore

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

From: Judge Pauline Newman [REDACTED]

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

To: Chief Judge Kimberly A. Moore [REDACTED]

Cc: [REDACTED]

[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...

Judge Newman

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.

Kimberly Moore

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

From: Chief Judge Kimberly A. Moore

Sent: Wednesday, April 5, 2023 4:12:37 PM

To: Judge Pauline Newman [REDACTED]

Subject: RE: [REDACTED]

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 staff member. Please let me know that you will address the alleged inappropriate conduct by [REDACTED] otherwise I need to do so. I have been advised that I should make certain that you appreciate that [REDACTED] should suffer no adverse consequences for having come forward.

Kimberly Moore

The Honorable Kimberly A. Moore

Chief Judge

U.S. Court of Appeals for the Federal Circuit

From: Judge Pauline Newman <[REDACTED]>
Sent: Wednesday, April 5, 2023 7:19:29 PM
To: Chief Judge Kimberly A. Moore [REDACTED]>
Cc: [REDACTED]
Subject: Re: [REDACTED]

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

On Apr 5, 2023, at 4:12 PM, Chief Judge Kimberly A. Moore
[REDACTED] wrote:

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 staff member. Please let me know that you will address the alleged inappropriate conduct by [REDACTED] otherwise I need to do so. I have been advised that I should make certain that you appreciate that [REDACTED] should suffer no adverse consequences for having come forward.

Kimberly Moore

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

From: Chief Judge Kimberly A. Moore
Sent: Tuesday, April 4, 2023 5:37 PM

To: Judge Pauline Newman [REDACTED]

Subject: [REDACTED]

Judge Newman,

A concern by a member of your staff has been brought to my attention. I understand that your law clerk [REDACTED] has been contacting your paralegal in the middle of the night to perform some work-related and some personal tasks for her. I further understand that he has let [REDACTED] 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 [REDACTED]'s supervisor to ensure that this uncomfortable situation does not continue. Can you please confirm receipt of this message?

Kimberly Moore

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

Exhibit 7

From: Judge Pauline Newman
Sent: Thursday, April 27, 2023 5:25 PM
To: Chief Judge Kimberly A. Moore
Cc: [REDACTED]
Subject: Re: Support services

Judge Moore,

I never released my paralegal [REDACTED] from my chambers staff. His movement to your staff, without consultation with me, violates his confidentiality and other obligations to me.

Nor have I released my law clerk [REDACTED]. I observe that he is now listed as "law clerk— chambers of [REDACTED]" This was not cleared with me, and I was never notified of this move, again in violation of the confidentiality of my chambers, and in violation of my right to law clerk services.

Judge Newman

Sent from my iPhone

On Apr 27, 2023, at 9:43 AM, Chief Judge Kimberly A. Moore [REDACTED] wrote:

Judge Newman,

Your paralegal ceased to be a member of your chambers staff on April 19, 2023 and the circumstances surrounding this are, as you know, a matter of on-going proceedings.

You requested to bring in a temporary assistant (you indicated that your prior assistant [REDACTED] was willing). This was approved days ago and our HR [REDACTED] has repeatedly tried to process her return but you have refused to allow her to proceed. If there is delay in processing your cases due to not having an assistant (despite having three law clerks) that could have been cured by your permitting HR to proceed to bring back your prior assistant-which was repeatedly offered to you.

Given that you refuse to bring in exactly the temporary assistant services you requested unless the court posts an advertisement for a permanent position, and are using your lack of assistant support as an excuse for further delays in processing cases please accept the court's repeated offer to bring in a temporary assistant and our HR team will also begin the process of posting for a replacement.

Kimberly Moore

Get [Outlook for iOS](#)

Exhibit 8

From: [REDACTED]
Sent: Thursday, April 27, 2023 8:23
To: Judge Pauline Newman [REDACTED]
Cc: Greg.Dolin@ncla.legal; mark.chenoweth@ncla.legal
Subject: RE: CONFIDENTIAL: Follow-up

Judge Newman,

Respectfully, I have not withheld any information from your counsel and stand by what I stated in the below email. As I previously explained to you by email on April 24, 2023, your concerns about staffing for your chambers need to be addressed to the Judicial Council and not me. I was not involved in the decision concerning the removal of staff from your chambers or the question of whether to fill the vacancy. Your request for expansion of services by the Clerk's Office—namely direct secretarial support and assistance with editing and preparing opinions—is outside of the scope of our authority or services we provide to any other judge of this court. Accordingly, I promptly referred your request to Chief Judge Moore, who responded to you the same day. Absent a contrary direction from either the Chief Judge or the Judicial Council, I cannot proceed and so again, I request that you direct your concerns to them.

The Clerk's Office remains available to provide the same services to you that we provide to any other chambers, which we have done so since the beginning of this matter. Specifically, we have continued to provide you with IT support and assistance; full access to existing communication and network systems; and the processing of judicial directions from you and your chambers, including promptly issuing an opinion on your behalf earlier this week. Once you alerted me to the issue of a removed desktop from your chambers, I attempted to clarify for you what happened; explained that the movement of the desktop from your chambers was standard policy when a staff member changes desks; explained that even with the movement of the desktop there was no chambers information on the device as all of your chambers records were saved to and available on your private chambers network drive; and directed the prompt restoration of a desktop to your chambers, which has since happened. I explained this all to you over several email exchanges ending on April 25, 2023.

You have my consent to share our several email exchanges with your counsel.

Regards,

[REDACTED]



[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED] | www.ca9c.uscourts.gov

From: Judge Pauline Newman [REDACTED]
Sent: Wednesday, April 26, 2023 17:40
To: [REDACTED]
Cc: Greg.Dolin@ncla.legal; mark.chenoweth@ncla.legal
Subject: Re: CONFIDENTIAL: Follow-up

[REDACTED], you have withheld from my counsel the information that you refused to permit filling the paralegal/secretarial position in my chambers, unlike all the other judges. My judicial activity is highly prejudiced.

Judge Newman

Sent from my iPhone

On Apr 25, 2023, at 10:52 AM, [REDACTED] wrote:

Mr. Dolin,

Thank you for speaking with me by phone moments ago.

Appearance and Admission. Since my earlier message to Judge Newman, the Judicial Council has waived the need for formal entry of appearance. Because you clarified that you are now lead counsel on this matter and a member of the Federal Circuit bar, this is moot anyway. We do not require any separate filing on this point.

Service and Filing. In order to expedite the receipt by you and the Judicial Council of all matters and avoid the need for paper delivery and service, we agreed to the following process.

1. If needed, any future filings with the judicial council on this matter can be emailed to me at this address. Please send anything in PDF format encrypted using the same password we agreed to by telephone.
2. I will serve any orders and items from the judicial council or the special committee to you, Mr. Chenoweth, and Judge Newman by email in the same format, again using the same password.

Copy of Current Orders. I will transmit by email to you today all orders already entered in this matter. The files will be encrypted with the same password.

Access to Court Resources. While on the phone, you asked for clarification on Judge Newman's ability to access her chambers materials and issue opinions. I

clarified that Judge Newman has continued and continues to have full access to her chambers materials and the ability to transmit opinions to the Clerk's Office for issuance. I noted that I separately clarified this issue for Judge Newman by email earlier today. The Clerk's Office remains available to provide the same technical assistance and support for Judge Newman that we currently provide to all of the other judges of the court.

Please let me know if I can clarify anything else. My direct dial and mobile number are below as well if you need to reach me.

Regards,


[REDACTED]



[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED] | www.ca9c.uscourts.gov

Exhibit 9

From: Judge Pauline Newman
Sent: Thursday, July 6, 2023 10:23 AM
To: Chief Judge Kimberly A. Moore
Cc: 
Subject: Return of my chambers computer

Chief Judge Moore,

I once more request the return of my chambers computer, with my stored information . It is apparently being withheld at your instruction, for my requests have all been rejected. Please instruct the immediate return of the computer that was taken from my chambers.

Judge Newman

Sent from my iPhone

From: Chief Judge Kimberly A. Moore
Sent: Thursday, July 6, 2023 11:49 AM
To: Judge Pauline Newman
Cc: [REDACTED] [Director of IT; Help Desk Manager; Clerk of Court]
Subject: RE: Return of my chambers computer

Judge Newman,

It is my understanding that you have raised repeatedly the concern that when [REDACTED] resigned from your chambers his computer had your stored information on it. Our Clerk of Court, [REDACTED], and our IT Department, all of whom are copied here, have explained to you multiple times that when [REDACTED] resigned any of your chamber's information that had been stored locally on his computer was uploaded to your chambers y drive and that his computer's access to your y drive was immediately disabled by our IT staff. I have been informed that our Clerk of Court and our IT Department have both examined [REDACTED] computer on multiple occasions and confirmed that there is none of your stored information on his computer and that his computer has no access to your y drive. I have further been informed that they have communicated this to you repeatedly by email. I copy them on this so that they may confirm yet again, as you have been repeatedly told, that there is no computer with your stored information being withheld from you.

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

From: [REDACTED] [Clerk of Court]
Sent: Thursday, July 6, 2023 11:58 AM
To: Chief Judge Kimberly A. Moore; Judge Pauline Newman
Cc: [REDACTED] [Director of IT; Help Desk Manager]
Subject: RE: Return of my chambers computer

Chief Judge Moore and Judge Newman,

I can confirm both that based on my personal knowledge this response is accurate and that there is no computer with Judge Newman's stored information being withheld.

Sincerely,

[REDACTED]



[REDACTED]
Circuit Executive and Clerk of Court
U.S. Court of Appeals for the Federal Circuit

[REDACTED] (direct) | [REDACTED] (mobile) | www.ca9c.uscourts.gov

From: [REDACTED] [Director of IT]
Sent: Thursday, July 6, 2023 12:11 PM
To: Chief Judge Kimberly A. Moore; Judge Pauline Newman
Cc: [REDACTED] [Help Desk Manager; Clerk of Court]
Subject: RE: Return of my chambers computer

Good afternoon,

I can confirm [REDACTED] has no access to Judge Newman's shared drive nor has any of Judge Newman's data stored locally on his PC.

Thanks

[REDACTED] [Director of IT]

From: [REDACTED] [Help Desk Manager]
Sent: Thursday, July 6, 2023 12:23 PM
To: Chief Judge Kimberly A. Moore; Judge Pauline Newman
Cc: [REDACTED] [Director of IT; Clerk of Court]
Subject: RE: Return of my chambers computer

Chief Judge Moore and Judge Newman,

I can confirm [REDACTED] has no access to Judge Newman's shared drive nor has any of Judge Newman's data files stored locally on his PC.

Thanks

[REDACTED] [Help Desk Manager]

From: Judge Pauline Newman
Sent: Thursday, July 6, 2023 4:52 PM
To: [REDACTED] [Help Desk Manager]
Cc: Chief Judge Kimberly A. Moore; [REDACTED] [Director of IT;
Clerk of Court]
Subject: Re: Return of my chambers computer

Who has my chambers computer and its drive containing my files? Whoever has it, please return it immediately.

Judge Newman

Sent from my iPhone

From: Judge Pauline Newman
Sent: Thursday, July 6, 2023 5:06 PM
To: Chief Judge Kimberly A. Moore
Cc: [Redacted] [Director of IT; Help Desk Manager;
Subject: Re: Return of my chambers computer Clerk of Court]

I again request that the computer drive containing my information be immediately returned to me.

Judge Newman

Sent from my iPhone

From: Chief Judge Kimberly A. Moore
Sent: Thursday, July 6, 2023 6:00 PM
To: Judge Pauline Newman
Cc: [REDACTED] [Director of IT; Help Desk Manager;
Clerk of Court]
Subject: RE: Return of my chambers computer

Judge Newman,

I again refer this to our IT Department. But given that they have told you many times now that there is no computer/computer drive containing your information which is being withheld from you, I am not sure what it is that you expect them to do. They have repeatedly told you that all your information is on your y drive, not stored locally on some other computer drive outside your chambers. IT can you please respond to this email from Judge Newman?

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

From: [REDACTED] [Director of IT]
Sent: Thursday, July 6, 2023 7:12 PM
To: Judge Pauline Newman [Help Desk
Cc: Chief Judge Kimberly A. Moore; [REDACTED] Manager; Clerk of
Subject: Re: Return of my chambers computer Court]

Judge Newman,

We have checked, double checked and tripled checked and there is no data on any local computer or drive that belongs to you. All of your data is on the Newman share. There is absolutely nothing to give you. Again all of your data is on the Newman share.

Thanks

[REDACTED] [Director of IT]

Sent from my iPhone

From: Judge Pauline Newman
Sent: Thursday, July 6, 2023 9:54 PM
To: Chief Judge Kimberly A. Moore
Cc: [Redacted] [Director of IT; Help Desk Manager; Clerk of Court]
Subject: Re: Return of my chambers computer

Judge Moore,
Correction. My chambers computer was removed and has not been returned, despite my frequent requests. I require its return.
Judge Newman

Sent from my iPhone

From: Chief Judge Kimberly A. Moore
Sent: Friday, July 7, 2023 8:24 AM
To: Judge Pauline Newman [Director of IT; Help Desk Manager;
Cc: [REDACTED] Clerk of Court]
Subject: RE: Return of my chambers computer

Judge Newman,

I have been informed by IT and our Clerk of Court that the following information has been communicated to you no less than a dozen times in writing by at least three different individuals: our Director of IT, [REDACTED], our Head of IT Help Desk, [REDACTED], and our Clerk of Court, [REDACTED]. Each of whom is copied on this email. I shall nonetheless request that they again explain to you what I understand they have told you repeatedly. [REDACTED]'s computer contains no Newman chambers information; it contains only his Clerk's Office work, his work calendar, his work email, etc. As the many emails sent to you by our IT personnel and Clerk of Court state there is no computer with your information which is being withheld from you. Because no such computer exists, there is nothing that IT could return to you. I ask that our staff confirm this for you yet again, which I hope will resolve your concerns.

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

From: [REDACTED] [Director of IT]
Sent: Friday, July 7, 2023 9:00 AM
To: Judge Pauline Newman [Help Desk
Cc: [REDACTED]; Chief Judge Kimberly A. Moore Manager; Clerk of
Subject: RE: Return of my chambers computer Court]

Judge Newman,

I checked again yesterday and no Newman Chambers files reside on [REDACTED]'s PC. There is nothing to return to you as we have informed you previously that all Newman Chambers files were moved to the Newman Share when [REDACTED] moved down to the Clerk's Office. [REDACTED]'s PC has been scanned on multiple occasions to confirm that no Newman Chambers files reside on his local PC.

Thanks

[REDACTED] [Director of IT]

From: Judge Pauline Newman
Sent: Friday, July 7, 2023 10:43 AM
To: [REDACTED] [Director of IT] [Help Desk
Cc: [REDACTED]; Chief Judge Kimberly A. Moore Manager; Clerk of
Subject: Re: Return of my chambers computer Court]

I require return of the computer and its contents as were in my chambers. Their removal without my knowledge and authorization, have never been explained. Nor did you (or anyone) ask for permission to review the contents and decide what I could keep, as you now tell me was done.

Please return my chambers computer and its contents, as they were when you took them.

Judge Newman

Sent from my iPhone

From: Judge Pauline Newman
Sent: Friday, July 7, 2023 12:16 PM
To: Chief Judge Kimberly A. Moore
Cc: [REDACTED] [Director of IT; Help Desk Manager; Clerk of Court]
Subject: Re: Return of my chambers computer

Judge Moore,
I have no interest in [REDACTED]'s computer. I request the return of my computer and its contents. If it has been destroyed, please advise who authorized the destruction, and why.
Judge Newman
Sent from my iPhone

From: [REDACTED] [Clerk of Court]
Sent: Friday, July 7, 2023 12:34 PM
To: Judge Pauline Newman; [REDACTED] [Director of IT]
Cc: [REDACTED]; Chief Judge Kimberly A. Moore [Help Desk Manager]
Subject: RE: Return of my chambers computer

Judge Newman,

Respectfully, I must disagree that this matter has never been explained to you. I personally have attempted to explain this to you in several email communications. I will again attempt to do so here. Computers are assigned to individuals and not specific chambers or individuals. This has been court policy for many years. When chambers staff leave chambers, their computers are removed, and a new computer is put in it for the new replacing staff member. This has been the practice for any staff of yours who have left your chambers. Because this is a court wide policy, IT staff never asks permission and simply follows the standing policy.

[REDACTED]'s transition memorandum to you explained how he handled his files and made sure that any chambers records were on your network drive not his desktop. On multiple occasions, he has explained to me that his practice was to never save any chambers records on his desktop and only saved them on your chambers network drive. As an extra precaution and in response to your expressed concerns, our IT staff made sure to confirm that none of your records were on his desktop. At no point did any court staff "decide what [you] could keep" or look at any files as you allege. As one of the people involved in the process, I can confirm that we merely confirmed that there were no files remaining on his desktop and that he could no longer access any of your chambers records after he was no longer working in your chambers.

I will also note that I previously offered to have you or a member of your staff personally inspect [REDACTED]'s desktop to confirm the above but this offer was declined.

While I understand your frustration with the situation, my staff and I are at a loss since, as [REDACTED] noted, there are no files that can be returned. Moreover, we have offered repeatedly to assist you with locating any files you cannot find or access. However, through our many conversations, we have yet to learn of any file or record of your chambers that is actually missing or unavailable. If you or a member of your staff identifies such an item, our staff will gladly work with you to locate it.

Sincerely,

[REDACTED]



[REDACTED]
Circuit Executive and Clerk of Court
U.S. Court of Appeals for the Federal Circuit

[REDACTED] (direct) | [REDACTED] (mobile) | www.ca9c.uscourts.gov

From: [REDACTED] [Clerk of Court]
Sent: Friday, July 7, 2023 12:35 PM
To: Judge Pauline Newman; Chief Judge Kimberly A. Moore
Cc: [REDACTED] [Director of IT; Help Desk Manager]
Subject: RE: Return of my chambers computer

Judge Newman,

I'm confused. What computer was removed beyond [REDACTED]'s?

[REDACTED]



[REDACTED]
Circuit Executive and Clerk of Court
U.S. Court of Appeals for the Federal Circuit

[REDACTED] (direct) | [REDACTED] (mobile) | www.ca9.uscourts.gov

From: Judge Pauline Newman
Sent: Friday, July 7, 2023 1:56 PM
To: [REDACTED] [Clerk of Court]
Cc: [REDACTED] Chief Judge Kimberly A. Moore [Director of IT; Help Desk Manager]
Subject: Re: Return of my chambers computer

My main chambers computer contains opinion drafts, forms, records, correspondence, and decades of stored and archived material. I cannot believe that all this is routinely destroyed whenever a JA is replaced, and without a word to the judge that the drafts, records, correspondence, and all other stored material must be destroyed without notice. Are you stating that this is the court's policy?

Judge Newman

Sent from my iPhone

From: [REDACTED] [Clerk of Court]
Sent: Friday, July 7, 2023 2:20 PM
To: Judge Pauline Newman
Cc: [REDACTED]; Chief Judge Kimberly A. Moore [Director of IT; Help
Subject: Re: Return of my chambers computer Desk Manager]

Judge Newman,

That is not the policy and not at all what I have been saying for weeks.

Every chambers stores those items on the ir network drives which are accessible to every computer in that chambers. The items you describe are located on your network drive.

Our policy and practice predates my arrival of at least seven years ago. In just my time at the court, we have never received such inquiries or complaints from any other chambers, including yours, whenever a law clerk or staff member turns over. As such, I remain at a loss as to what the actual is with file access in your chambers.

[REDACTED]
[REDACTED]
Circuit Executive and Clerk of Court
U.S. Court of Appeals for the Federal Circuit

From: Judge Pauline Newman
Sent: Friday, July 7, 2023 2:54 PM
To: [REDACTED] [Clerk of Court]
Cc: [REDACTED]; Chief Judge Kimberly A. Moore [Director of IT; Help
Desk Manager]
Subject: Re: Return of my chambers computer

When [REDACTED] left he took the chambers computer and the chambers telephone. After my complaints the telephone was eventually returned—although it took several days. The computer has never been returned.

If no other chambers has ever complained about removal of their equipment and information, as you say, then no other chambers has been so improperly treated.

Again, I require return of my computer with its drive and content as removed from my chambers.

Judge Newman

Sent from my iPhone

From: [REDACTED] [Clerk of Court]
Sent: Friday, July 7, 2023 3:13 PM
To: Judge Pauline Newman
Cc: [REDACTED]; Chief Judge Kimberly A. Moore [Director of IT; Help
Subject: Re: Return of my chambers computer Desk Manager]

Judge Newman,

Respectfully, your characterization is contrary to what I and staff have done and experienced in attempting to resolve this matter.

Because no content was ever removed from your chambers and the physical computer was moved per existing policy, I am denying this request as contrary to court policy and consider this matter closed until I am otherwise directed by the Judicial Council.

Sincerely,

[REDACTED]

[REDACTED]
Circuit Executive and Clerk of Court
U.S. Court of Appeals for the Federal Circuit

From: Judge Pauline Newman
Sent: Friday, July 7, 2023 3:44 PM
To: [REDACTED] [Clerk of Court] [Director of IT; Help
Cc: [REDACTED]; Chief Judge Kimberly A. Moore Desk Manager]
Subject: Re: Return of my chambers computer

To be clear: your position is that if is “contrary to court policy “ to return the computer and its drive containing my chambers information?

Judge Newman

Sent from my iPhone

From: [REDACTED] [Clerk of Court]
Sent: Friday, July 7, 2023 4:08 PM
To: Judge Pauline Newman
Cc: [REDACTED]; Chief Judge Kimberly A. Moore [Director of IT; Help
Subject: Re: Return of my chambers computer Desk Manager]

Judge Newman,

I am at a loss for how different a way I can again explain what I have explained to you repeatedly for months.

Your files are on your network drive. You have access to everything. The computer contains none of your information and we are in possession of nothing of yours that can be returned. Everything was done by court policy. No one on staff has treated you differently or inconsistent with long standing policy. There is nothing left that either I or my staff can do to assist you with accomplishing this factual impossibility you seek.

[REDACTED]

[REDACTED]

Circuit Executive and Clerk of Court
U.S. Court of Appeals for the Federal Circuit

From: Judge Pauline Newman
Sent: Friday, July 7, 2023 4:22 PM
To: [REDACTED] [Clerk of Court] [Director of IT; Help
Cc: [REDACTED]; Chief Judge Kimberly A. Moore Desk Manager]
Subject: Re: Return of my chambers computer

I seek the return of the computer and drive containing decades of my work and my information. It was taken from my chambers and has not been returned. You do not have authority to decide what portion of my stored information should be available to me.

Sent from my iPhone

From: [REDACTED] [Clerk of Court]
Sent: Friday, July 7, 2023 4:24 PM
To: Judge Pauline Newman
Cc: [REDACTED]; Chief Judge Kimberly A. Moore [Director of IT; Help Desk Manager]
Subject: Re: Return of my chambers computer

Judge Newman,

I refer you to our prior email exchanges on this topic. You continue to have access to all of your chambers records.

[REDACTED]

[REDACTED]
Circuit Executive and Clerk of Court
U.S. Court of Appeals for the Federal Circuit

From: Judge Pauline Newman
Sent: Friday, July 7, 2023 4:29 PM
To: [REDACTED] [Clerk of Court] [Director of IT; Help
Cc: [REDACTED]; Chief Judge Kimberly A. Moore Desk Manager]
Subject: Re: Return of my chambers computer

That is incorrect.

Sent from my iPhone

From: [REDACTED] [Clerk of Court]
Sent: Friday, July 7, 2023 4:32 PM
To: Judge Pauline Newman [Director of IT; Help
Cc: [REDACTED]; Chief Judge Kimberly A. Moore Desk Manager]
Subject: Re: Return of my chambers computer

Please let us know what you cannot locate. Our staff is available and willing to assist you.

[REDACTED]
Circuit Executive and Clerk of Court
U.S. Court of Appeals for the Federal Circuit

From: Judge Pauline Newman
Sent: Friday, July 7, 2023 4:44 PM
To: [REDACTED] [Clerk of Court]
Cc: [REDACTED]; Chief Judge Kimberly A. Moore [Director of IT; Help
Subject: Re: Return of my chambers computer Desk Manager]

[REDACTED],
Where is the drive of my removed computer? Please return it immediately, with its contents as it was removed.
Judge Newman

Sent from my iPhone

From: [REDACTED] [Clerk of Court]
Sent: Friday, July 7, 2023 4:50 PM
To: Judge Pauline Newman
Cc: [REDACTED]; Chief Judge Kimberly A. Moore [Director of IT; Help
Subject: Re: Return of my chambers computer Desk Manager]

Judge Newman,

No drive with any contents was removed from your computer. There is nothing for us to return.

[REDACTED]
[REDACTED]
Circuit Executive and Clerk of Court
U.S. Court of Appeals for the Federal Circuit

From: Judge Pauline Newman
Sent: Friday, July 7, 2023 5:13 PM
To: [REDACTED] [Clerk of Court] [Director of IT; Help
Cc: [REDACTED] Chief Judge Kimberly A. Moore Desk Manager]
Subject: Re: Return of my chambers computer

[REDACTED] [Clerk of Court]

As you well know, the entire computer, drive and all, were removed from my chambers.
Your clever dissembling is shameful.

A court is supposed to represent justice, not trickery.

Judge Newman

Sent from my iPhone

Exhibit 10

Regina Carney, M.D.
1870 SW 52nd Terrace
Plantation, FL 33317
615-636-5792

Independent Medical Examination
In the Matter of: Judge Pauline Newman

Introduction and Reason for Evaluation and Opinion

My name is Dr. Regina Carney. I am an adult forensic psychiatrist employed full-time by the Miami Veteran's Administration Medical Center, and working independently as a consultant on legal cases involving individuals with known or suspected psychiatric conditions. My credentials are more fully described on the curriculum vitae attached hereto as Exhibit 1 I have published the articles and chapters listed on Exhibit "A" hereto, focusing on cognitive disorders including Alzheimer's Disease and other dementias. I have testified as an expert witness during the past 4 years at trial or at deposition in the case listed in Exhibit 1.

I received my B.S. degree in biology from Duke University and my M.D. from Stony Brook University Medical Center in New York. I completed my residency in General Psychiatry at Vanderbilt University Medical Center in Nashville, Tennessee and completed a fellowship in forensic psychiatry at the University of Miami Miller School of Medicine in Miami, Florida. Previously, I served in the following positions: 1) Inpatient Staff Psychiatrist for the Mental Health and Behavioral Science Service at the Bruce W. Carter VA Medical Center; 2) Supervising Attending Physician for the Adult Outpatient Psychiatry Clinic at the University of Miami Miller School of Medicine; 3) Medical Director for the Miami Dade Forensic Alternative Center at the University of Miami Miller School of Medicine; and 4) Assistant Professor at the University of Miami Miller School of Medicine.

I am board-certified in both Adult Psychiatry and Forensic Psychiatry by the American Board of Psychiatry and Neurology. Attached as Exhibit A is my current CV. Dr. Gregory Dolin, a Senior Litigation Counsel with the New Civil Liberties Alliance and an attorney for Judge Newman, retained me to review and evaluate Judge Pauline Newman, a 96-year-old Judge in the Federal Circuit Court of Appeals, who lives in Washington, D.C. The fees for my services are borne by Judge Newman and not NCLA.

The findings of this preliminary report are based in part on a three-hour clinical evaluation of Judge Newman performed by me on August 25, 2023, including administration of The Modified Mini-Mental State Examination (3-MS).

Other records reviewed and considered in the opinion include:

- 1) Primary Care Medical Records from One Medical Group for Judge Pauline Newman, dated 02/26/2021-06/14/2023
- 2) (Enclosed within above) Cardiology Medical Records from Scott Shapiro, MD, PhD, including an Echocardiogram performed 05/26/2023
- 3) Statement of Clinical Impression of Ted L Rothstein, MD, Neurologist, summarizing Clinical Evaluation and Findings from Examination dated 06/21/2023

- 3) Publicly available proceedings at: <https://cafc.uscourts.gov/home/the-court/notices-announcements/>
- 4) Law360 Article by Andrew Michaels. "Judge Newman's Recent Dissents Show She Is Fit For Service," (06/06/2023)
- 5) Social Science Research Network Manuscript by Ron D. Katznelson, Ph.D. "Is There a Campaign to Silence Dissent at the Federal Circuit? (August 28, 2023)."
- 6) Description of duties of a United States Circuit Judge

Informed Consent

Judge Newman was informed that a confidential doctor-patient relationship did not exist due to the nature of the evaluation process, and that although an opinion would be rendered, medical treatment would not be provided. She agreed to pay the associated fees for this evaluation. The contract and fee structure were reviewed. Notably, Judge Newman carefully considered the contract and autonomously commented on the open-ended nature of the arrangement. She requested and her attorney executed an addendum to ensure costs beyond a reasonable, specific sum would be mutually agreed upon before being incurred. Judge Newman was informed that a report of the results of the evaluation would be provided to the U.S. Court of Appeals for the Federal Circuit in regard to the current investigation. Judge Newman indicated that she understood this information and agreed to undergo the evaluation. She provided written consent for disclosure of information to and from the non-public sources named in the records reviewed.

History of Present Complaint

Judge Newman presented for this evaluation on August 25, 2023 in association with an ongoing complaint and action filed with the U.S. Court of Appeals by Chief Judge Kimberley Moore, under the Judicial Conduct and Disability Act. The complaint filed by Chief Judge Moore states that concerns exist within the court that Judge Newman "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" and/or "is unable to discharge all the duties of office by reason of mental or physical disability." The complaint detailed allegations of decreased work output with significant and habitual delays in "processing and resolution of cases" (resulting in re-assignment of some cases), an episode of fainting during a hearing followed by Judge Newman's inability to ambulate independently, and potential "impairment of cognitive abilities (i.e., attention, focus, confusion and memory) that render Judge Newman unable to function effectively in discharging case-related and administrative duties. It has been stated that Judge Newman routinely makes statements in open court and during deliberative proceedings that demonstrate a clear lack of awareness over the issues in the cases." There was also an allegation of "inappropriate behavior in managing staff" and a disclosure of sensitive medical information to staff.

Judge Newman was suspended from hearing further cases beginning in April of 2023, "pending resolution of this investigation."

Evaluation and Observations

Judge Pauline Newman arrived 30 minutes early for the evaluation. She was professionally dressed, appropriate for the weather (mentioning it was likely to rain), and her grooming and hygiene were unremarkable, with no obvious areas of deficit. Demeanor was calm and cooperative. She had eyeglasses

that she wore for reading tasks but removed in conversation. She spoke fluently and attended well to the interview, handling changes in topic with agility. Her speech was notable for an expanded vocabulary consistent with her lifetime work in law. She was careful to clarify any terms that might have been unfamiliar to the interviewer; for example, she indicated that her judicial assistant functioned “in effect, as my secretary” until the interviewer indicated familiarity with the term “J.A.”, whereupon she used that term going forward.

Interactively, Judge Newman warmed to the interview, and provided full and detailed responses. Judge Newman was able to articulate and respond to the concerns raised in a collected manner. She had no specific recollection of a negative event or experience that might have given rise to the complaint. She was aware that her intellectual abilities and personal medical fitness were being questioned, and stated, “If I’m deluding myself, I’d be glad to know that.” When the prospect of a voluntary cognitive evaluation during the interview was mentioned, she frowned and opined, “it’s totally improper and inappropriate for my colleagues to put me through these tests. When people are being evaluated, you eventually get to questions that cannot be answered. My experience with my colleagues is that whatever the break-point is, then they point out where you could not answer. There is also a totally unscrupulous media that misrepresents the results.” The voluntary nature of the cognitive evaluation was reiterated, and the matter was agreed to be re-considered at the end of the interview.

Occupational History and Recent Events

Judge Newman provided a detailed social, educational, and occupational history that is abbreviated here for expediency. She recalled becoming a federal judge in 1984 at the request of President Ronald Reagan, from whom she received a personal phone call offering the role. At the time, she has been working for 30 years in a senior role in the patent system. In regard to the judgeship offer, she stated, “it wasn’t what I was looking for, but the court had been formed just a few years before. In regard to the politics, I had no idea. I got a call and said I’d be willing.” Judge Newman expressed that she finds her work intellectually and philosophically engaging, and enjoys it immensely. She remarked, “it’s an extraordinary position; it’s very difficult work, but it’s full of satisfaction for doing something for the nation. Doing some justice.” She noted, “I do speak out about what I think. I know very well I’m not popular with my peers. I think one of the reasons I’m in trouble is when I think they’re wrong, I tell them. The Supreme Court usually then says I’m right - that’s a reassurance.”

With regard to productivity and quality of her opinions, Judge Newman expressed that she felt “nothing has changed. I’m still learning things.” She agreed that human aging was generally associated with some natural slowing of work production and physical skills, particularly at extreme ages. However, she also noted that “the work does not require a 20-year old’s peak [performance]. I see some things more clearly due to my experience.” She referenced the statistical review of her work output published by Ron Katznelson (listed in records reviewed section of this evaluation) in this vein.

Judge Newman characterized herself as a generally strong-willed and outspoken individual, even when her opinions were not in line with others. She noted, “they are saying I’m grouchy and my staff have been leaving. I’ve been arguing with the IT staff because they took my [secretary’s] computer two or three months ago.” She also noted that “all of the affidavits saying my behavior is inappropriate have been in the past few months, since this complaint was filed. I am not physically disabled, and I’m still writing opinions. If I thought I was slipping, I would quit.”

Cognitive Evaluation

Given Judge Newman's advanced educational attainment and exceptional verbal fluency, the possibility of some degree of successful concealment of an underlying cognitive defect was examined. A quantitative examination of cognition was thus performed at the end of the interview. The Modified Mini-Mental Status Exam (3-MS) was administered; this test was chosen specifically to avoid re-testing ("learning") effects related to the recently administered Montreal Cognitive Assessment (MOCA). Having personally administered the 3-MS several hundreds of times to individuals of varying cognitive abilities, my experience is that the examination usually requires 20 to 30 minutes to complete. The 3-MS is given in a highly standardized manner, with scripted prompts for the items. It is scored on a 100-point scale.

Judge Newman was able to read, write with her right hand, and reply appropriately to complete the examination. Judge Newman completed the 3-MS in 11 minutes, with a final score of 98 out of 100. She missed 2 points for generating only eight four-legged animals in 20 seconds, out of a possible 10. She was dismayed to hear of this result and scolded herself for not thinking of barnyard animals as a category. She scored perfectly on the word recall items, retaining all 3 words after both immediate and delayed time periods. The original 3-MS scoresheet is attached as Exhibit 1.

Summary and Opinion:

In summary this is a fluent, engaging, strong-willed, highly accomplished and unusually cognitively intact 96-year-old woman with chronic medical issues that appear well-controlled at the current time, with no evidence of current substantial medical, psychiatric, or cognitive disability. She is ambulatory, provides a complete and accurate personal, social, occupational, and medical history, and is fully oriented to time, place, date, situation and the nature of the current investigation. She reports no history of, or current, psychiatric or cognitive issues including anxiety, depression, or substance use disorders. She appears to show remarkable resilience; while she noted feeling "defensive" about the investigation, she did not note persistently anxious or depressed mood. She expressed a positive worldview, and chatted extemporaneously with the interviewer regarding a recent advance in the treatment of alcoholism that she had read about.

In my medical and professional opinion, Judge Newman demonstrated no substantial emotional, medical, or psychiatric disability that would interfere with continuation of her longstanding duties as a Judge in the U.S. Court of Appeals.

Sincerely,

/s/

Regina Carney, M.D.

Diplomate, American Board of Psychiatry and Neurology

Diplomate, Forensic Psychiatry, American Board of Psychiatry and Neurology

Associate Program Director, Forensic Psychiatry Fellowship

Voluntary Assistant Professor, Department of Psychiatry and Behavioral Sciences

Leonard M. Miller School of Medicine at the University of Miami Adjunct Assistant Professor

Alpha Omega Alpha Teaching Faculty

Herbert Wertheim College of Medicine at Florida International University

Medical Director of Inpatient Psychiatric Services (09/2018-09/2022)

Medical Director of Outpatient Substance Use Disorder Clinic (09/2022-current)

Miami Veteran Affairs Medical Center

1201 NW 16th Street, Room A110

Miami, FL 33125

Phone: 615-636-5792 (cellular)

Email: rcarney0305@gmail.com

Exhibit 1
to the
Report of Independent
Medical Examination
of Pauline Newman
by
Regina M. Carney, M.D.

THE MODIFIED MINI-MENTAL STATE EXAMINATION (3MS)

Center: Family #: Individual #: Individual's Name: Judge Pauline Newbenger man

Date of Exam: 08/25/2023 (Friday) Examiner: Regina Carney, MD

Now, I would like to ask you some questions to check your memory and concentration. Some of the questions may be easy and some will be harder. Take your time if you need to. We can skip over questions if you don't understand them. Just relax and do your best.

START TIME 11:47:16 PM

- | | | |
|----|--|-----------------------|
| 1. | Who is the president of the United States now? | CORRECT..... <u>1</u> |
| | RECORD: <u>President Biden</u> | INCORRECT.....0 |
| | | REFUSED.....7 |
| 2. | Who was the president before him? <u>transliteration out (author's)</u> | CORRECT..... <u>1</u> |
| | RECORD: <u>The Infamous Trump</u> | INCORRECT.....0 |
| | | REFUSED.....7 |
| 3. | Who is the Vice President of the United States now? | CORRECT..... <u>1</u> |
| | RECORD: <u>Kamal a Harris</u> | INCORRECT.....0 |
| | | REFUSED.....7 |
| 4. | Who was the Vice President before him? <u>her</u> | CORRECT..... <u>1</u> |
| | RECORD: <u>the Infamous Pence</u> | INCORRECT.....0 |
| | | REFUSED.....7 |
| 5. | Who is the governor of (your state) now? | CORRECT..... <u>1</u> |
| | <u>We do not have a gov. in DC.</u> | INCORRECT.....0 |
| | RECORD: <u>How about Florida? What de Sanjin</u> | REFUSED.....7 |
| 6. | There are 3 words on this card that I would like you to remember. Please say the words aloud while you read them. Then I will take the card away, and have you repeat all 3 words. | SCORE (0-3) <u>3</u> |
| | | REFUSED.....7 |

SHOW WORDS AND HAVE RESPONDENT READ. CORRECT (HIM/HER) IF (HE/SHE) MISREADS. TAKE CARD AWAY. Now what were those three words? HAVE RESPONDENT REPEAT. IF THERE ARE ERRORS, CONTINUE WITH ADDITIONAL TRIALS (UP TO 3 TRIALS).

NUMBER OF TRIALS NEEDED

SCORE FIRST TRY. REPEAT WORDS FOR THREE TRIALS ONLY.

	TRIAL #1	TRIAL #2	TRIAL #3
SHIRT	<u>✓</u>	<u>✓</u>	<u>✓</u>
NICKEL	_____	_____	_____
HONESTY	_____	_____	_____

**** BE SURE TO SAY: Remember the 3 words because later I will ask you to repeat them.

CHECK WHEN REMINDER IS GIVEN

7. Now please count from 1 to 5.
ASSIST ONLY ONCE IF NEEDED.

DOES NOT COMPREHEND TASK SCORE 0 ON
BACKWARD TASK AND GOTO ITEM 8

RECORD: ✓ ✓ ✓ ✓ ✓
1 2 3 4 5

Now I would like you to count backwards from 5 to 1.

RECORD: ✓ ✓ ✓ ✓ ✓
5 4 3 2 1

CORRECT..... 2
1 OR 2 ERRORS..... 1
≥3 ERRORS/CAN'T DO..... 0
REFUSED..... 7

8. Please spell the word "World."
ASSIST ONLY ONCE IF NEEDED.

DOES NOT COMPREHEND TASK SCORE 0 ON
BACKWARD TASK AND GO TO ITEM 9

RECORD: ✓ ✓ ✓ ✓ ✓
W O R L D

Now please spell "World" backwards.

RECORD: ✓ ✓ ✓ ✓ ✓
D L R O W

SCORE NO. OF LETTERS IN CORRECT
POSITION..... 5
REFUSED..... 7

9. What were the three words that I asked you to remember? (SHIRT, NICKEL, HONESTY)
IF THE SUBJECT DOES NOT GIVE ALL CORRECT ANSWERS, PROMPT AS NEEDED:

RECORD: <u>✓</u> (SHIRT)	RECORD: <u>✓</u> (NICKEL)	RECORD: <u>✓</u> (HONESTY)
A) SPONTANEOUS RECALL 3	B) SPONTANEOUS RECALL 3	C) SPONTANEOUS RECALL 3
1) One of the words was something you wear.	1) One of the words was some money.	1) One of the words was a good personal quality or virtue.
RECORD 2	RECORD 2	RECORD 2
2) SHOW CARD. HAVE S. READ AND MAKE SELECTION. SHOES, SHIRT, SOCKS 1	2) SHOW CARD. HAVE S. READ AND MAKE SELECTION. PENNY, NICKEL, DOLLAR 1	2) SHOW CARD. HAVE S. READ AND MAKE SELECTION. HONESTY, CHARITY, MODESTY 1
CIRCLE WORD.	CIRCLE WORD.	CIRCLE WORD.
3) IF STILL INCORRECT RESPONSE, PROVIDE CORRECT ANSWER (shirt).	3) IF STILL INCORRECT RESPONSE, PROVIDE CORRECT ANSWER (nickel).	3) IF STILL INCORRECT RESPONSE, PROVIDE CORRECT ANSWER (honesty).
NO RECALL/CAN'T DO 0	NO RECALL/CAN'T DO 0	NO RECALL/CAN'T DO 0
REFUSED 7	REFUSED 7	REFUSED 7

SCORE FOR SHIRT 3
SCORE FOR NICKEL 3
SCORE FOR HONESTY 3

ORIENTATION SECTION (ITEMS 10-18)

- | | | |
|-----|---|--|
| 10. | What year is it?

RECORD: <u>2023</u> | CORRECT..... (3)
MISSED BY 1 YEAR 1
INCORRECT/CAN'T DO.....0
REFUSED7 |
| 11. | What is the season of the year?

RECORD: <u>Summertime</u> | CORRECT WITHIN A WEEK..... (3)
MISSED BY 1 MONTH 2
INCORRECT BUT NAMES A SEASON 1
INCORRECT/CAN'T DO.....0
REFUSED7 |
| 12. | What day of the week is it?

RECORD: <u>Friday</u> | CORRECT..... (3)
MISSED BY 1 DAY 1
INCORRECT/CAN'T DO.....0
REFUSED7 |
| 13. | What month is it?

RECORD: <u>August</u> | CORRECT..... (3)
INCORRECT BUT WITHIN 3 DAYS 2
MISSED BY 1 MONTH 1
INCORRECT/CAN'T DO.....0
REFUSED7 |
| 14. | What is today's date?

RECORD: <u>25th</u> | CORRECT..... (3)
MISSED BY 1 OR 2 DAYS..... 2
MISSED BY 3-5 DAYS 1
INCORRECT/CAN'T DO.....0
REFUSED7 |
| 15. | What state are we in?
<i>we are not in a state</i>
RECORD: <u>Can you tell me a nearby</u> | CORRECT..... (2)
INCORRECT/CAN'T DO.....0
REFUSED7 |
| 16. | What county are we in?
<i>state? Virginia</i>
RECORD: <u>Can you tell me a</u>
<i>nearby county? Montgomery Co, MD</i> | CORRECT..... (1)
INCORRECT/CAN'T DO.....0
REFUSED7 |
| 17. | What town are we in? <u>Washington DC</u>
IF S. DOES NOT ANSWER, PROMPT AS NEEDED:
What is the nearest town?
What town do you consider to live in?
What is the town on your mailing address?

RECORD: _____ | CORRECT..... (1)
INCORRECT/CAN'T DO.....0
REFUSED7 |
| 18. | Are we in a church, a home or an office?

RECORD: <u>office</u> | CORRECT..... (1)
INCORRECT/CAN'T DO.....0
REFUSED7 |

IF SUBJECT IS BLIND, TAP SUBJECT FOR ITEMS 19-23, AND SAY "I am going to tap you and I'd like you to tell me the name of the body part that I tap."

19. POINT TO YOUR FOREHEAD. CORRECT.....**13**
 What is this called? INCORRECT/CAN'T DO.....0
 REFUSED7

RECORD: forehead

20. POINT TO YOUR CHIN. CORRECT.....**1**
 What is this called? INCORRECT/CAN'T DO.....0
 REFUSED7

RECORD: Chin

21. POINT TO YOUR SHOULDER. CORRECT.....**13**
 What is this called? INCORRECT/CAN'T DO.....0
 REFUSED7

RECORD: elbow → Shoulder

22. POINT TO YOUR ELBOW. CORRECT.....**1**
 What is this called? INCORRECT/CAN'T DO.....0
 REFUSED7

RECORD: Knuckle

23. POINT TO YOUR KNUCKLE CORRECT.....**1**
 What is this called? INCORRECT/CAN'T DO.....0
 REFUSED7

RECORD: _____

24. Now I am going to give you a category and I want you to name as many things as you can that come from that category. For example, if I said "fruit," you would say "orange, apple, or banana." Can you name another kind of fruit? RECORD RESPONSE.

grape

Now I have another category and it is animals. Please name as many four-legged animals as you can. You will have 20 seconds. START TIMER. TELL SUBJECT, "Begin now". ALLOW 20 SECONDS. IF NO RESPONSE IN 10 SECONDS, REPEAT THE QUESTION ONCE, RECORD; ALLOW ANOTHER 10 SECONDS, THEN GO TO ITEM 25.

SCORE.....(0-10) **08**
 REFUSED97

<u>dog</u>	<u>deer</u>	_____	_____
<u>cat</u>	<u>leopard</u>	_____	_____
<u>lion</u>	_____	_____	_____
<u>tiger</u>	_____	_____	_____
<u>panther</u>	_____	_____	_____
<u>rhinoceros</u>	_____	_____	_____

32. HAND S. A PENCIL AND FOLDED SHEET. **Please write a sentence on this page.** ALLOW 1 MINUTE, AND ANOTHER 30 SECONDS AFTER PROMPTING (IF NECESSARY). PROMPT IF S. WRITES INCOMPLETE SENTENCE: **Write the sentence, "The band played and the crowd cheered."**

LEGIBLE, CORRECT SENTENCE 5
 LEGIBLE SENTENCE WITH ERROR(S) 4
 LEGIBLE, CORRECT SENTENCE AFTER PROMPT 3
 LEGIBLE SENTENCE WITH ERROR(S) AFTER PROMPT 2
 WRITES NAME OR LEGIBLE, INCOMPLETE SENTENCE AFTER PROMPT 1
 ILLEGIBLE/CAN'T DO 0
 REFUSED 7

33. SHOW S. SHEET WITH DRAWING. **Here is a drawing. Please copy the drawing on the same paper.** POINT TO BOTTOM OF THE PAGE BELOW DOTTED LINE. ALLOW 1 MINUTE FOR COPYING.

SCORE EACH PENTAGON

	L	R
5 SIDES	4	4
1 UNEQUAL SIDE	3	3
OTHER CLOSED FIGURE	2	2
2 OR MORE LINES	1	1
CAN'T DO	0	0
REFUSED	7	7

INTERSECTION

4 CORNERS 2
 NOT A 4 CORNER ENCLOSURE 1
 NONE/CAN'T DO 0
 REFUSED 7

34. **What were the three words that I asked you to remember (SHIRT, NICKEL, HONESTY)? IF THE SUBJECT DOES NOT GIVE ALL CORRECT ANSWERS, PROMPT AS NEEDED:**

RECORD: _____ ✓ (SHIRT) _____ ✓ (NICKEL) _____ ✓ (HONESTY)

A) SPONTANEOUS RECALL 3 B) SPONTANEOUS RECALL 3 C) SPONTANEOUS RECALL 3

1) One of the words was something you wear.

RECORD _____ 2

2) SHOW CARD. HAVE S. READ AND MAKE SELECTION. *SHOES, SHIRT, SOCKS* 1
 CIRCLE WORD.

3) IF STILL INCORRECT RESPONSE, PROVIDE CORRECT ANSWER (*shirt*).

NO RECALL/CAN'T DO 0
 REFUSED 7

1) One of the words was some money.

RECORD _____ 2

2) SHOW CARD. HAVE S. READ AND MAKE SELECTION. *PENNY, NICKEL, DOLLAR* 1
 CIRCLE WORD.

3) IF STILL INCORRECT RESPONSE, PROVIDE CORRECT ANSWER (*nickel*).

NO RECALL/CAN'T DO 0
 REFUSED 7

1) One of the words was a good personal quality or virtue.

RECORD _____ 2

2) SHOW CARD. HAVE S. READ AND MAKE SELECTION. *HONESTY, CHARITY, MODESTY* 1
 CIRCLE WORD.

3) IF STILL INCORRECT RESPONSE, PROVIDE CORRECT ANSWER (*honesty*).

NO RECALL/CAN'T DO 0
 REFUSED 7

SCORE FOR SHIRT
 SCORE FOR NICKEL
 SCORE FOR HONESTY

END TIME

NOTES:

Some questions were improvised due to Washington DC (not being located in a state, or having a governor.) Subject was able to transition to state from which examiner traveled, with ease.

Category Fluency - 8 of 10 animals listed in 20 seconds.

Cognitive function appears ~~intact~~^{intact} based on speed and accuracy of responsive responses, in context of extended qualitative interview given same day.

Ryan Conway
MD

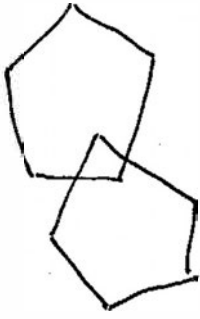
	3MS Score
Page 1 Total:	<u>8</u> / 8
Page 2 Total:	<u>16</u> / 16
Page 3 Total:	<u>20</u> / 20
Page 4 Total:	<u>13</u> / 15
Page 5 Total:	<u>17</u> / 17
Page 6 Total:	<u>24</u> / 24
Total/Raw Score:	<u>98</u> / 100
Education Adjusted Score:	_____

SHIRT

NICKEL

HONESTY

CLOSE YOUR EYES



It looks like rain.

ALZHEIMER DISEASE CLINICAL DEMENTIA RATING (CDR)

Center:

Family#:

Individual#:

Individual's name:

Exam Date:

Examiner:

Evaluation by:

In Person Telephone Medical Records

Reconstructed?

Yes No Unknown

Impairment Level and CDR Score (0, 0.5, 1, 2, 3)						
	None 0	Questionable 0.5	Mild 1	Moderate 2	Severe 3	Score:
Memory	No memory loss or slight inconsistent forgetfulness	Consistent slight forgetfulness; partial recollection of events; "benign" forgetfulness	Moderate memory loss; more marked for recent events; defect interferes with everyday activities	Severe memory loss; only highly learned material retained; new material rapidly lost	Severe memory loss; only fragments remain	
Orientation	Fully Oriented	Fully oriented except for slight difficulty with time relationships	Moderate difficulty with time relationships; oriented for place at examination; may have geographic disorientation elsewhere	Severe difficulty with time relationships; usually disoriented to time, often to place	Oriented to person only	
Judgment & Problem Solving	Solves everyday problems & handles business & financial affairs well; judgment good in relation to past performance	Slight impairment in solving problems, similarities, & differences <i>not observed</i>	Moderate difficulty in handling problems, similarities, and differences; social judgment usually maintained	Severely impaired in handling problems, similarities, and differences; social judgment usually impaired	Unable to make judgments or solve problems	
Community Affairs	Independent function at usual level in job, shopping, volunteer & social groups	Slight impairment in these activities	Unable to function independently at these activities although may still be engaged in some; appears normal to casual inspection	No pretense of independent function outside home; appears well enough to be taken to functions outside a family home	No pretense of independent function outside home; appears too ill to be taken to functions outside the home	
Home & Hobbies	Life at home, hobbies, and intellectual interests well maintained <i>see: undergraduate forum</i>	Life at home, hobbies, and intellectual interests impaired slightly <i>forum</i>	Mild but definite impairment of function at home; more difficult chores abandoned; more complicated hobbies and interests abandoned	Only simple chores preserved; very restricted interests, poorly maintained	No significant function in home	
Personal Care	Fully capable of self care <i>well dressed, appropriate grooming and attire, asked for restroom</i>	Fully capable of self-care	Needs prompting	Requires assistance in dressing, hygiene, keeping of personal effects	Requires much help with persons care; frequent incontinence	
					Global CDR:	0

Comments:

AOO: *not apparent*

DEPRESSION/STROKE HISTORY: *declines entirely*

CHRONOLOGICAL HISTORY OF DECLINE: (PLEASE CONTINUE IN THE BACK) *history is per investigation*

Form Name: AD CDR
Revised: 6/21/06

had a wrist fracture (nonoperative 08/2023)

Exhibit 11

From: [REDACTED]
Sent: Tuesday, January 31, 2023 11:10 AM
To: [REDACTED]
Subject: RE: Judge Availability for April 2023 Court Week

Good morning, [REDACTED]:

Judge Newman is available to sit 2-3 days, or as needed for April 2023 court week. Judge Newman advised me our panels may be limited until our back log of older cases is reduced. Thanks so much!

Best,
[REDACTED], M.P.S.
Paralegal to the Honorable Pauline Newman
U.S. Court of Appeals for the Federal Circuit
717 Madison Place NW, Washington, DC 20439
[REDACTED] | [REDACTED]

From: [REDACTED]
Sent: Monday, January 30, 2023 7:50 AM
To: All Judges' Secretaries [REDACTED]
[REDACTED]
Subject: Judge Availability for April 2023 Court Week

Good morning,

Please let me know the number of days your judge is available to sit during April 2023 court week (April 3, 2023 – April 7, 2023) no later than Friday, February 3, 2023.

Thank you,

[REDACTED]
Executive Assistant
Chambers of Chief Judge Kimberly A. Moore
U.S. Court of Appeals for the Federal Circuit
717 Madison Place NW
Washington, DC 20439
[REDACTED] | [REDACTED]

Exhibit 12

DECLARATION OF TED L. ROTHSTEIN, M.D.

1. I, Ted J. Rothstein, M.D., am over the age of 18 and make this Declaration in support of Judge Pauline Newman's Response to the Judicial Council in her case before it.
2. I am a Neurologist practicing in Washington D.C. I am affiliated with the George Washington University Hospital. I received a medical degree from Virginia Commonwealth University School of Medicine.
3. I have practiced medicine for more than 30 years. I am Board Certified in Neurology. I served an internship at the Queens Hospital in Honolulu, Hawaii, and completed Residency in Neurology at University of Washington in Seattle, Washington.
4. I became Board Certified in Neurology in 1975 and am both a Fellow of the American Academy of Neurology and Stroke Fellow of the American Heart Association.
5. I have 32 peer reviewed publications in scientific journals and 100 presentations in my field.
6. My most recent publication is *Cortical Grey Matter Depletion Links with Neurological Sequelae in Post COVID-19 "Long Haulers,"* in BMC Neurol. 2023 Jan 17;23(1):22.
7. I make this Declaration based on personal knowledge as to my background, and information gleaned from examining Judge Newman on June 21, 2023. I produced a report based upon that examination on June 21, 2023, and it is attached as Exhibit 1 to this Declaration.
8. My examination of Judge Newman was, except as to adjust to her then broken wrist, complied in all respects with the Montreal Cognitive Assessment ("MoCa") test that is standard for assessing cognitive function.
9. Before administering the MoCa examination I took an oral medical and neurological history of Judge Newman. I also reviewed the analysis of Professor Andrew Michaels of the University of Houston on her representative opinions. At the time of my examination, she was under investigation by the Judicial Counsel for "medical impairments." My test demonstrated she had the cognitive function to continue to function as a judge in the court's proceedings.
10. It has been suggested that the MoCa test was inconclusive or unscientific because Judge Newman could not draw a clock at a particular time given her broken wrist.
11. The MoCa is a 30-point test and failure to draw a clock does not impede conclusions that can be drawn from the 3 points not testable. Moreover, a variety of elements are tested on MoCa, and spatial orientation is the only one that could not be evaluated on clock drawing.
12. Impaired wrist function does not preclude testing of cognitive function.

I declare under penalty of perjury that the foregoing is true and correct.

Executed On: August 29, 2023

/s/ Ted L. Rothstein
Ted L. Rothstein, M.D.

Exhibit 1
to the Declaration of
Ted L. Rothstein, M.D.



NEUROLOGY

at The GW Medical Faculty Associates

2150 Pennsylvania Avenue, NW, 9th Floor

Washington, DC 20037

phone: 202.741.2700 fax: 202.741.2721

Ms. Pauline Newman is a 96 yo United States Circuit Judge of the US court of Appeals who is here to evaluate her mental status.

She is currently under investigation by her Court for "medical impairments" including having had a heart attack and 2 stents -which she denies having- and being "intellectually compromised" and no longer able to function in her capacity as a federal judge. As a consequence she has been denied access to new cases.

Judge Newman denies having cognitive impairment. Her opinions in the past year have been quantitatively analyzed by Law Professor Andrew Michaels at the University of Houston Law School and found to be exemplary. He did not perceive "a significant drop in the quality or thoroughness of her opinions" over the previous decade.

She believes that she is being unfairly treated by her judicial colleagues. Much of this controversy has been depicted in Washington Post accounts over her being prevented from continuing to hear and write opinions on current cases.

Past medical Hx: She has a prior hx of "sick sinus syndrome" which is treated with a Pacemaker and [REDACTED]

She is a graduate of Vassar College, received a Master of Arts from Columbia University, a Doctor of Philosophy in Chemistry from Yale University and law degree from NY University School of Law. There is no family hx for memory disorders or dementia.

Judge Newman broke her right wrist one week ago and her R wrist is in a cast. She is unable to write.

Review of systems is otherwise not contributory.

On examination,
Her speech is fluid, with normal content and articulation. She describes her medical history and background with great detail and eloquence.

A partial MoCA examination is performed as she is unable to write and therefore cannot follow trail or draw a cube (each worth one point on the 30 point test). She scores 24/28 failing to remember 4 of 5 words after several minutes. All other aspects of the test were precise and correct.

Her head is normocephalic.

Neck is supple.

Cranial nerves,

Fundusoscopic examination discloses bilateral cataracts. EOMi. PERRL.

Sensation is intact. Her face is symmetrical with normal smile and eye closure.

Hearing normal to voice.

Tongue protrudes in midline.

Sensory and Motor exam,

Sensation normal over both hands.

Her arm strength is not tested.

Her gait is normal with normal stride, turn and arm swing. Romberg is negative.

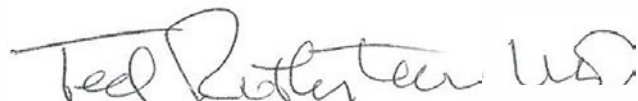
Reflexes are 2+ at the knees and ankles.

Impression,

Judge Newman has a slight limitation in immediate memory as reflected in her MoCA evaluation. Her cognition is otherwise completely normal. Her speech is normal and her ability to provide her vocational and medical history is precise and eloquent.

As she has a cardiac pacemaker and therefore she cannot undergo a Brain MRI with NeuroQuant which could have been used to measure volumes of key brain regions important for memory, she could have a more detailed neuropsychological evaluation as part of her neurological assessment..

My findings would support her having cognitive function sufficient to continue her participation in her court's proceedings.



Ted L. Rothstein MD
Professor of Neurology
George Washington University
June 21, 2023

Exhibit 13

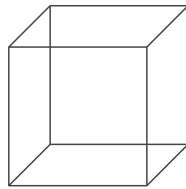
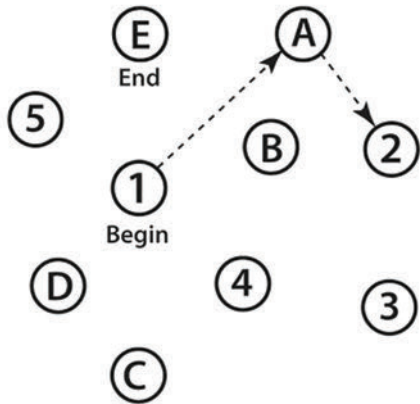
MONTREAL COGNITIVE ASSESSMENT (MOCA®)

Version 8.1 English

Name:
Education:
Sex:

Date of birth:
DATE:

VISUOSPATIAL / EXECUTIVE



Copy cube

Draw CLOCK (Ten past eleven)
(3 points)

POINTS

[]

[]

[]

[]

[]

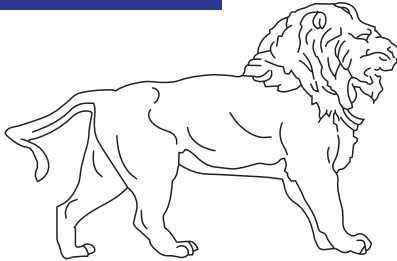
Contour

Numbers

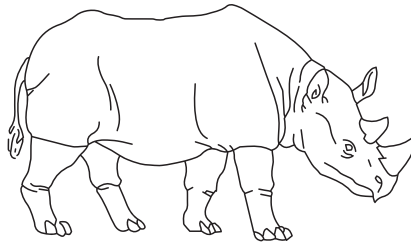
Hands

___/5

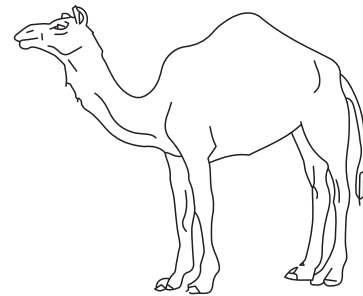
NAMING



[]



[]



[]

___/3

MEMORY

Read list of words, subject must repeat them. Do 2 trials, even if 1st trial is successful. Do a recall after 5 minutes.

	FACE	VELVET	CHURCH	DAISY	RED
1 ST TRIAL					
2 ND TRIAL					

NO POINTS

ATTENTION

Read list of digits (1 digit/ sec.).

Subject has to repeat them in the forward order.

[] 2 1 8 5 4

Subject has to repeat them in the backward order.

[] 7 4 2

___/2

Read list of letters. The subject must tap with his hand at each letter A. No points if ≥ 2 errors

[] F B A C M N A A J K L B A F A K D E A A A J A M O F A A B

___/1

Serial 7 subtraction starting at 100.

[] 93

[] 86

[] 79

[] 72

[] 65

4 or 5 correct subtractions: **3 pts**, 2 or 3 correct: **2 pts**, 1 correct: **1 pt**, 0 correct: **0**

___/3

LANGUAGE

Repeat: I only know that John is the one to help today. []

The cat always hid under the couch when dogs were in the room. []

___/2

Fluency: Name maximum number of words in one minute that begin with the letter F.

[] _____ (N ≥ 11 words)

___/1

ABSTRACTION

Similarity between e.g. banana - orange = fruit

[] train - bicycle

[] watch - ruler

___/2

DELAYED RECALL

(MIS)

Has to recall words WITH NO CUE

FACE

VELVET

CHURCH

DAISY

RED

Points for UNCUE recall only

___/5

Memory Index Score (MIS)

X3

Category cue

X1

Multiple choice cue

MIS = ___/15

ORIENTATION

[] Date

[] Month

[] Year

[] Day

[] Place

[] City

___/6

© Z. Nasreddine MD

www.mocatest.org

MIS: /15

(Normal ≥ 26/30)

Administered by: _____

Training and Certification are required to ensure accuracy

Add 1 point if ≤ 12 yr edu

TOTAL

___/30

Exhibit 14

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FEDERAL CIRCUIT JUDICIAL COUNCIL

BEFORE: THE HONORABLE KIMBERLY A. MOORE

THE HONORABLE RICHARD G. TARANTO

THE HONORABLE SHARON PROST

IN RE: COMPLAINT NO. 23-90015

SEALED HEARING

PUBLIC REDACTED VERSION

CORRECTED

NATIONAL COURTS BUILDING

717 Madison Place, N.W.

Washington, D.C.

Thursday, July 13, 2023

Reported by: Susanne Bergling, RMR-CRR

1 APPEARANCES :

2

3 ON BEHALF OF JUDGE PAULINE NEWMAN:

4 GREGORY DOLIN, ESQ.

5 JOHN VECCHIONE ESQ.

6 MARK CHENOWETH, ESQ.

7 New Civil Liberties Alliance

8

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1 P R O C E E D I N G S

2 - - - - -

3 (Proceeding called to order at 2:00 p.m.)

4 CHIEF JUDGE MOORE: Good morning. We're here for
5 argument -- or afternoon -- we're here for argument
6 today.

7 Mr. Dolin, are you going to proceed?

8 MR. DOLIN: I am.

9 CHIEF JUDGE MOORE: Please proceed.

10 MR. DOLIN: Thank you, Judge Moore. Good
11 afternoon, Your Honors. Gregory Dolin, senior
12 litigation counsel from the New Civil Liberties
13 Alliance, for The Honorable Pauline Newman. With me are
14 senior litigation counsel John Vecchione and, to his
15 left, Mark Chenoweth, president and general counsel of
16 the NCLA.

17 Before I begin on the merits, with the
18 Committee's permission, I would like to read our
19 objections in for the record.

20 CHIEF JUDGE MOORE: Before you begin with that,
21 let me -- as a housekeeping matter, I just want to
22 remind counsel at the outset that our rules prohibit any
23 audio or video recording of this argument, and I want to
24 ensure that you are not recording it in any way.

25 MR. DOLIN: Judge Moore, we have read your order,

1 and we certainly have no intention of violating it.

2 CHIEF JUDGE MOORE: Okay. And then I just want
3 to remind counsel that all aspects of this hearing are
4 confidential until we agree otherwise, okay?

5 MR. DOLIN: Yes. And, actually, I would like to
6 come back to that point, but, yes, I do understand that.

7 CHIEF JUDGE MOORE: Please proceed.

8 MR. DOLIN: So, first, just objections for the
9 record. First, we object to this proceeding before this
10 Committee and the Judicial Council of this Circuit due
11 to the inherent risk of an actual bias which we have
12 documented in our submissions.

13 We particularly object to the Special Committee's
14 membership given that all three of the members of this
15 committee attempted to convince Judge Newman to retire
16 in exchange for not launching this investigation. We
17 simply do not understand, given the constitutional and
18 statutory requirements, why the Chief Judge and/or the
19 Judicial Council have refused to request a transfer of
20 this matter.

21 Second, we object to this Committee's orders
22 excluding parts of Judge Newman's legal team and her
23 chambers staff from attending this hearing.

24 Third, we object to the Committee's refusal to
25 either provide us with a recording of this proceeding or

1 permit us to create one.

2 Fourth, and perhaps most importantly, we object
3 to Judge Newman's continued and illegal suspension from
4 the duties of the office to which she was nominated and
5 confirmed, and our appearance here today should not be
6 viewed as a waiver of any of the above objections.

7 Finally -- and this, I guess, goes to your last
8 point, Judge Moore -- we reiterate our request that all
9 of our materials submitted to this committee, including
10 our letters of July 5th and 12th, the Committee's order
11 of July 7th, 11th, and 12th, and a transcript of this
12 hearing be released with appropriate redactions pursuant
13 to Rule 23(b)(7).

14 With these objections noted for the record, I am
15 ready to address the substance of today's hearing. On
16 the merits we take issue with the Committee's
17 characterization of Judge Newman's behavior as failing
18 to cooperate. Quite the contrary. Judge Newman did not
19 fail to cooperate with this investigation.

20 As we've stated in our letter of April 4th --
21 sorry, April 21st, that Judge Newman is willing to
22 cooperate with an investigation that's conducted
23 consistent with the limits that the Constitution, the
24 Judicial Disability Act of 1980, and the rules of the
25 Judicial Conduct and Judicial Proceedings impose on such

1 investigations.

2 In our May 9th letter, at pages 45, we've
3 indicated that Judge Newman is willing to cooperate --
4 i.e., work together -- as the word "cooperate" is
5 defined in the dictionary. In our letter on May 25th at
6 3, we once again said that Judge Newman is committed to
7 providing records and undergoing appropriate medical
8 examination if this matter is transferred.

9 JUDGE PROST: But Mr. -- I'm sorry --

10 MR. DOLIN: Of course.

11 JUDGE PROST: -- but on that matter of
12 cooperation, even the citation you had in your brief,
13 that was predicated on our transferring the case, as I
14 understood it, and on our restoring her to sitting. Am
15 I -- and that's the quote that was in your brief --

16 MR. DOLIN: That is correct, because as of our
17 letter on May 25th, Judge Newman was suspended,
18 according to Judge Moore's own email, "pending
19 conclusion of this investigation." Respectfully,
20 there's no authority for such suspension.

21 We, of course, question the authority to suspend
22 even to -- at the conclusion of the investigation
23 because we submit that the Constitution does not permit
24 suspensions, but that aside, there's absolutely no
25 authority to suspend a sitting judge pending the

1 investigation.

2 JUDGE PROST: No, I appreciate that. I just
3 wanted to clarify your statements about her willingness
4 to cooperate and the predicate of --

5 MR. DOLIN: Correct, and so -- correct, and she
6 was willing to cooperate predicated on appropriate due
7 process proceedings and this Council and this Committee
8 behaving in an appropriate and legal manner as well.
9 So, yes, that was predicated on those matters.

10 And in contrast, this committee has refused to
11 work cooperatively, because as we've pointed out in our
12 letters, cooperation is a two-way street. It means
13 working together. This committee, on matters big and
14 small, refused to cooperate and work together with Judge
15 Newman, as we have now said a number of times, and
16 refused to transfer, even though every circuit faced
17 with a similar situation has transferred any
18 investigation of a circuit judge to another circuit, and
19 in refusing to do so attempted to support this refusal
20 with misleading data.

21 Just to point out that how every other circuit
22 dealt with this issue, even when a judge was no longer a
23 member of the Circuit Court, as was the case with then
24 Judge Kavanaugh when complaints were filed against him
25 citing his alleged misbehavior during Senate

1 confirmation hearings for his current seat, by the time
2 complaints were filed, he was already confirmed to the
3 Supreme Court.

4 The complaints went to the D.C. Circuit Judicial
5 Council, and even though Judge Kavanaugh -- but now
6 Justice Kavanaugh -- was no longer a member of that
7 Council, the matter was transferred. Chief Judge
8 Srinivasan was requested to transfer the matter, and it
9 was transferred to the Tenth Circuit. We were able to
10 find not a single instance when a complaint against a
11 circuit judge that was not dismissed outright was
12 handled in his home circuit, whether it's a complaint
13 against Judge Kavanaugh, Judge Maryanne Trump Barry, or
14 Judge -- I'm blanking on his name -- but the former
15 judge of the Sixth Circuit, Judge Jones of the Fifth
16 Circuit. Every single one was transferred.

17 This is the only time that it was not. The
18 Federal Circuit Judicial Council stands alone, and,
19 again, I fail to understand the logic behind it, and it
20 does show that this committee and council has refused to
21 cooperate with Judge Newman.

22 Of course, it has refused to reinstate Judge
23 Newman, and as I've pointed out, Judge Prost, there is
24 absolutely no basis -- at least there was no cited basis
25 up until the order of the Judicial Council of June 5th.

1 JUDGE TARANTO: Can I just ask you, the word
2 "cooperation" you're using with reference to the
3 committee based on what source?

4 MR. DOLIN: Based on the definition of that word
5 in the dictionary. It means working together, Your
6 Honor.

7 JUDGE TARANTO: The -- and the -- this is about
8 Judge Newman's refusal to cooperate with compliance with
9 the orders of the Committee, right?

10 MR. DOLIN: The hearing is certainly meant to
11 address that issue. What I am submitting to this
12 Committee is that in order to cooperate, in order to
13 work together, there must be -- both parties must
14 actually work together. At no point was the Committee
15 willing to entertain any of Judge Newman's requests,
16 whether it's her restoration or, in fact, even given an
17 explanation up until June 5th after we filed our suit as
18 to why she remains suspended.

19 JUDGE TARANTO: So we're here on a -- as you
20 know, a very specific three-part issue, whether there
21 was a failure to cooperate with respect to the directive
22 with medical records, that's first; second, with respect
23 to the directive regarding the neurological and
24 neuropsychological examinations; and third, the request
25 for interview.

1 Can we just start briefly with the last one?
2 Twice, I think on April 17th and May 16th, the Special
3 Committee specifically invited Judge Newman to sit down
4 for an interview to discuss any alleged factual errors
5 or, more generally, in the April 17th one. What was the
6 good cause for Judge Newman's refusal to take up that
7 express invitation for an opportunity to discuss the
8 claims with us?

9 MR. DOLIN: Well, Judge Taranto, I think I would
10 respectfully disagree with the characterization. I
11 don't think it was an invitation to discuss, as you
12 said, factual errors or other general matters. In fact,
13 the invitation --

14 JUDGE TARANTO: I think the April 17th order was
15 perfectly general as to sit down for an interview. The
16 May 17th focused on -- was -- didn't limit it but
17 focused on some things that I think you all had said in
18 response to an earlier order and said there's been
19 assertions that we have made factual errors and we would
20 like an opportunity to have an interview to hear about
21 those factual errors, and yet Judge Newman has said no.

22 MR. DOLIN: So, Judge Taranto, so to finish my
23 previous answer and then kind of to expand on it, I --
24 again, I so respectfully disagree with the
25 characterization and the following sentence. I think

1 that the order did not specify exactly what the
2 Committee wished to interview Judge Newman about. There
3 was just -- it's open-ended, but it didn't specify --

4 JUDGE TARANTO: But she said she wanted it.

5 MR. DOLIN: That's -- respectfully, that's not
6 what it said.

7 JUDGE TARANTO: The April 17th said sit down for
8 an interview.

9 MR. DOLIN: But an interview implies that the
10 Committee is asking questions, and so Judge -- it's
11 not -- it's not a conversation, so -- and so we would
12 want to -- but more fundamentally, like I said, we
13 object to this Committee proceeding because this
14 Committee cannot -- by definition cannot be a neutral
15 decision-maker, cannot be the neutral recommender.

16 JUDGE TARANTO: So it's not, in your view, that
17 there was no opportunity to have an interview with this
18 Committee, but that she's not interested in having an
19 interview with this --

20 MR. DOLIN: I don't think I suggested there was
21 no opportunity for an interview. I've suggested that
22 the Committee, in requesting an interview, did not
23 specify why it wants one. In fact, its request for an
24 interview was contrary to the prior assertion that this
25 Committee and this Judicial Council is apparently aware

1 of the personalities and aware of what has gone on,
2 which is why, supposedly, it's refusing to transfer the
3 matter elsewhere.

4 But furthermore --

5 JUDGE TARANTO: I'm sorry, "supposedly"? Where
6 do you get that?

7 MR. DOLIN: That was part of the order of -- the
8 first order that denied transfer. That was the order, I
9 believe, of May 3rd, and that order said one of the
10 reasons we're refusing to transfer is because we, the
11 Federal Circuit Judges, are familiar with the
12 personalities and with the issues in a way that other
13 circuits would not be familiar with.

14 JUDGE TARANTO: You're referring, I assume, to
15 some elaboration from the Breyer Committee Report about
16 why the Breyer Committee implemented the statute to make
17 transfer an exception, right, as a general matter?

18 MR. DOLIN: No, Your Honor. I'm referring to the
19 order of May 3rd, which -- hold on -- on page -- it's a
20 long order. I have to find it.

21 (Pause in the proceeding.)

22 CHIEF JUDGE MOORE: I think you want page 10 of
23 the May 3rd order.

24 MR. DOLIN: Page 10, thank you. Thank you,
25 right. So request for a transfer, so it starts at page

1 9, and it suggests that in this case relative ignorance
2 of the judges of another circuit, of local circumstances
3 and personalities that might make them less able to
4 gauge whether corrective action would be effective and
5 appropriate, and judges within another circuit would be
6 in a poor position to persuade a judge whom they do not
7 know well to take the actions they believe are
8 necessary.

9 Of course, that is always true in every complaint
10 about a circuit judge, but this seems to me, at least
11 the way I read it, was a justification as to why this
12 matter was not asked to be transferred.

13 JUDGE TARANTO: Can I -- can I turn to a
14 different topic --

15 MR. DOLIN: Of course.

16 JUDGE TARANTO: -- and this is --

17 CHIEF JUDGE MOORE: Before you turn to that,
18 could I ask a followup question?

19 JUDGE TARANTO: Yes, of course.

20 CHIEF JUDGE MOORE: I guess, Mr. Dolin, I'm
21 perplexed. All this says is other judges in other
22 circuits would be less familiar with personalities. How
23 does that not -- how does that equate to, therefore, you
24 don't need to interview Judge Newman to understand the
25 concerns about errors of fact that she claims may exist?

1 MR. DOLIN: Well, first, Judge Moore, we've
2 pointed out two obvious errors of fact that -- you know,
3 the claim that she had a heart attack and the claim that
4 she had a cardiac stent placed. Frankly, we don't even
5 understand where such allegations -- what the source of
6 these allegations are and on what basis they were made.

7 CHIEF JUDGE MOORE: Before we -- before we
8 potentially discuss that, I guess I'd like to stick with
9 what is the good cause for her refusal to interview. In
10 the May 16th order, I will read to you the portion of
11 the order which requests an interview.

12 "Judge Newman has suggested that the Committee's
13 prior orders contained errors of fact, but she has not
14 identified any specific errors."

15 I get now that you're saying she did identify one
16 error, at least by now she has, and that's fine. I'll
17 give you that.

18 "We have previously invited Judge Newman to meet
19 with the Committee for an interview in which she could
20 provide the Committee with information relevant to the
21 investigation -- that's very open-ended, you see --
22 including correcting any errors of fact. We again
23 request that Judge Newman participate in a videotaped
24 interview with the Committee which will provide her with
25 an opportunity to clarify these matters."

1 How is the fact that another Circuit may be less
2 familiar with personalities good cause for her refusing
3 to participate in an interview which would create the
4 Committee with an opportunity to gain clarity into the
5 matters before it?

6 MR. DOLIN: So a two-part answer. First, I
7 think, as we're now on the same page, we have clarified
8 some of these errors with respect to the heart attack,
9 with respect to the cardiac stent, with respect to the
10 errors on --

11 CHIEF JUDGE MOORE: Actually, you have attorney
12 argument about them. You don't actually have evidence,
13 right?

14 MR. DOLIN: No, I respectfully disagree. It's
15 not an argument. It's a statement that --

16 CHIEF JUDGE MOORE: What's a statement?

17 MR. DOLIN: -- Judge -- it's a statement that
18 Judge Newman -- it's not an argument. It's a statement
19 of fact that Judge Newman did not have a heart attack.

20 JUDGE TARANTO: I'm sorry. Is that by somebody
21 with personal knowledge?

22 MR. DOLIN: Yes, by somebody with personal
23 knowledge.

24 JUDGE TARANTO: That's you?

25 MR. DOLIN: That is me, but I -- based on a

1 personal --

2 JUDGE PROST: Well, since we're there, and I hate
3 to interrupt the flow, but I would like to ask you about
4 that. If you feel it's appropriate for you to respond
5 and to detail for us the information with respect to her
6 medical condition, including a heart attack, correct,
7 you've made statements that she never had a heart -- she
8 didn't have a heart attack and she didn't have a stent,
9 but in our May 16th order, we repeatedly, when we talked
10 about getting medical records, we talked about cardiac
11 issues.

12 So can you represent to us, if she is accepting
13 that she didn't have a heart attack and didn't have a
14 stent, did she engage -- have any cardiac issues during
15 the period in 2021 that we're discussing that required
16 hospitalization or medical attention or otherwise?

17 MR. DOLIN: I'm trying to -- respectfully, Your
18 Honor, I'm trying to think through my answer, not
19 because I don't necessarily know the answer but because
20 of our standing objection to sharing medical information
21 with this Committee.

22 And so I think a better approach would be that
23 I -- I can't provide that answer, because --

24 JUDGE PROST: Okay. Well on that point,
25 though --

1 MR. DOLIN: -- of our standing objection.

2 JUDGE PROST: -- in terms of sharing medical
3 information, some of the at least the surface
4 information that we have arises from Dr. Rothstein's
5 1 1/2 page report, in which in at least one paragraph,
6 which he did, which I think most physicians and
7 neurologists would do, they would request certain
8 background medical information, and there's a reference
9 that he makes in that report to [a cardiac condition]
10 being treated by -- with a Pacemaker, and, [REDACTED]

11 [REDACTED]
12 [REDACTED] a quick review of
13 just the Mayo Clinic's report on defining that -- and
14 you're a doctor, you probably understand this better
15 than I -- is that that is a heart-related problem.

16 MR. DOLIN: I don't think we dispute -- I think
17 Judge Newman -- I think she has been very open that she
18 has a Pacemaker. You asked me more specifically whether
19 she had any issues in 2021. Maybe I misunderstood the
20 question. And so I think it's not -- it's really not a
21 secret Judge Newman has a Pacemaker. I believe it's
22 even in newspaper reports, but --

23 JUDGE TARANTO: But you don't -- you don't want
24 to say whether there was a cardiac event in 2021.

25 MR. DOLIN: I -- not because there was one and

1 I'm trying to hide it, but I do not want to discuss
2 Judge Newman's medical records, especially ones that are
3 entirely irrelevant to her mental abilities, for all the
4 reasons we have stated in our letter or our numerous
5 letters.

6 CHIEF JUDGE MOORE: But just -- I just want to
7 make sure we're clear. You -- you have asserted she
8 didn't have a heart attack in the summer of 2021.

9 MR. DOLIN: Correct.

10 CHIEF JUDGE MOORE: You've admitted she's had a
11 Pacemaker installed, but you won't tell us whether she
12 had a cardiac issue that resulted in her hospitalization
13 for any surgical procedures in 2021?

14 MR. DOLIN: We've admitted that she had the
15 Pacemaker installed for, I believe, over a decade,
16 nothing to do with 2021. She's had the Pacemaker for
17 quite some time.

18 CHIEF JUDGE MOORE: But you won't acknowledge
19 whether she was admitted to the hospital, say GW
20 Hospital, on, say, June of 2022, or admitted to another
21 hospital in May or June or July of 2021. You won't
22 admit or deny or discuss, so you'll say she did not have
23 a heart attack, and you can't imagine where we got that
24 idea.

25 MR. DOLIN: Correct.

1 CHIEF JUDGE MOORE: But you won't say she wasn't
2 in the hospital during that same time for cardiac
3 issues.

4 MR. DOLIN: Correct, although, of course, I
5 wouldn't know that the Committee also did not indicate
6 as to where its belief that Judge Newman did have a
7 heart attack or had a cardiac stent placed, which is a
8 fairly specific procedure --

9 JUDGE PROST: But we were -- okay, what we were
10 talking about -- initially I started this by, okay,
11 we're moving away from a heart attack and the technical
12 definition of a heart attack to then whether she suffers
13 from any cardiac issues, which could have, as the
14 symptoms for [the cardiac condition] indicate, could result
15 in confusion, dizziness, or light-headedness, fainting
16 or near fainting, fatigue, shortness of breath, slower
17 pulse, chest pain, et cetera.

18 MR. DOLIN: Those are conditions associated with
19 [the cardiac condition]. I'm not quite sure what, for
20 example, dizziness or shortness of breath have to do
21 with one's ability to carry on and work as a federal
22 judge.

23 JUDGE TARANTO: How about to finish up the list?

24 MR. DOLIN: Sorry?

25 JUDGE TARANTO: Finish the list. Confusion, some

1 of the other items, you think that has nothing to do
2 with -- with the issue of --

3 MR. DOLIN: It might, but there is no --

4 JUDGE TARANTO: -- Judge Newman's ability?

5 MR. DOLIN: Again, anybody -- you know, I have
6 spoken to Judge Newman at length. Reporters have spoken
7 to Judge Newman at length. Former judges of this Court
8 have spoken to Judge Newman at length. No one, except
9 several staff members, have indicated that she was at
10 any point confused. So, yes, it --

11 JUDGE PROST: But you have pinpointed the whole
12 heart issue, you have disputed it, and we focused on a
13 particular time frame as the Chief just mentioned, but
14 you are unwilling to disclose to us if any issues
15 related to [the cardiac condition] would require
16 hospitalization or intensive medical care during that
17 period that we had identified with respect to the heart
18 ailment.

19 MR. DOLIN: Correct. But also, I mean, I would
20 point out that the -- I think, again, I may -- I
21 understand that -- you know, in one of the orders, the
22 Committee said that the underlying question may come
23 into the purview, as we're discussing, refusal --
24 alleged refusal to cooperate, but, of course, again,
25 this hearing is focused on whether or not Judge Newman

1 cooperated, and it's not to whether she had a good
2 cause, and if she does not, what is the appropriate
3 sanction, so --

4 JUDGE PROST: Well, with respect to the
5 cooperation aspect of the medical records, as our May
6 16th order indicated, what we said was those records --
7 the medical records we were talking about would be
8 provided to the neurologist or people examining her, and
9 that seems to be kind of what happened even in, you
10 know, whatever limited medical exam was performed by
11 Dr. Rothstein.

12 MR. DOLIN: And I --

13 JUDGE PROST: These records with respect to her
14 medication and coronary issues were provided to
15 Dr. Rothstein, correct?

16 MR. DOLIN: Dr. Rothstein was provided with such
17 records as he deemed necessary.

18 CHIEF JUDGE MOORE: I guess that's a little bit
19 hard for me to understand. Was Dr. Rothstein provided
20 with any medical records or is his statement about her
21 condition in his report based on her oral discussion of
22 her medical conditions?

23 MR. DOLIN: I will refer you to the answer I made
24 just moments ago. Dr. Rothstein was provided with such
25 information as he deemed necessary to conduct his

1 examination.

2 JUDGE TARANTO: And you think that that's an
3 answer to the question, what the source of the
4 information was?

5 MR. DOLIN: That I -- I believe that is the --
6 the answer that -- that I can give.

7 JUDGE TARANTO: Okay.

8 MR. DOLIN: Again, I'm -- for reasons stated
9 before, Your Honor -- and I do mean no disrespect -- but
10 for reasons stated before, we're not willing to discuss
11 Judge Newman's medical records with this Committee --

12 JUDGE TARANTO: And remind me what those reasons
13 are, please.

14 MR. DOLIN: Again, this Committee -- again, this
15 Committee --

16 JUDGE TARANTO: You keep saying "again," and if
17 you can state it so that I understand it clearly.

18 MR. DOLIN: We believe this Committee is
19 improperly constituted. We believe this matter should
20 not stay with the Federal Circuit. We believe this
21 Committee has not made a prima facie case as to why the
22 evaluation is needed in the first place.

23 So, for example, if you will allow me to
24 sidetrack a little bit, one of the main points that the
25 Committee has made on numerous occasions was that Judge

1 Newman has extraordinary delays.

2 JUDGE TARANTO: And I need to back up, get off
3 the statistical point, or before we get to it, do I
4 remember your response -- your July 5th response
5 objected to providing information to or agreeing to
6 undergo examinations with the two medical professionals
7 that our medical consultant identified, partly -- maybe
8 entirely -- anyway, you say because there hasn't been
9 some sort of Daubert qualification of them?

10 Is it your position that the Daubert standard
11 applies to the examiners or other submitters of expert
12 evidence to us?

13 MR. DOLIN: My position is that we have no idea
14 of who these people are or why -- on what basis they
15 were chosen --

16 JUDGE TARANTO: Can you answer the question about
17 whether you're asserting that the Daubert standard
18 applies?

19 MR. DOLIN: Well, I think if you let me finish my
20 answer, I think -- I'll get to the answer --

21 JUDGE TARANTO: Just try to answer the direct
22 question.

23 MR. DOLIN: I understand, but I promise I will
24 get to it. Give me just a little bit of leeway.

25 We don't know who these people are, we don't know

1 why they were chosen, and, therefore, we have no idea
2 whether they are or are not experts.

3 And so whether it's the full Daubert that applies
4 or any kind of smaller version of it, I think the
5 general idea that people doing the examination and then
6 providing supposedly an expert report to the Committee
7 have -- we have to have some assurance that these are
8 actually qualified people, and we have -- that they're
9 not biased, that they're not -- and we have no idea on
10 what basis these individuals were chosen.

11 So I don't -- I -- I think, ultimately, when
12 these reports are submitted and they're considered by
13 the Committee, I think Daubert has application
14 whether -- you know, whether it's verbatim or it's
15 just -- or it's general idea, but, you know --

16 JUDGE TARANTO: So let me ask you then about
17 that, and this is now turning back to Dr. Rothstein.
18 The essence of Daubert is that qualifications are in the
19 beginning, that the substance of the testimony must have
20 a sound foundation, a reliable foundation, and that it
21 is for that reason absolutely standard, that when the
22 expert testifies, he or she has to disclose the basis,
23 the materials he or she looked at and what their
24 reasoning was from them.

25 So if that's right, how is it that you think it's

1 irrelevant what materials Dr. Rothstein was supplied?

2 MR. DOLIN: I don't think it's irrelevant. I --
3 but for reasons stated previously -- and, again, of
4 course, Dr. Rothstein is not testifying --

5 JUDGE TARANTO: So you don't think it's
6 irrelevant. You just think that we're illegitimate
7 outfits that doesn't deserve to get that answer.

8 MR. DOLIN: I don't think it's illegit -- I
9 wouldn't call this an illegitimate outfit, Your Honor.
10 I think this Committee is improperly constituted and is
11 an improper body to adjudicate this matter, and because
12 of the -- both the bias --

13 CHIEF JUDGE MOORE: Counsel -- Counsel, in your
14 brief, you pointed us to Dr. Rothstein's evaluation of
15 Judge Newman. You told us his conclusion, that her
16 cognitive function is sufficient to continue her
17 participation on the Court, and then you expressly told
18 us that this examination should obviate the need for
19 further testing.

20 This is a hearing about whether it was misconduct
21 for Judge Newman to refuse to undergo the medical
22 testing we requested. Your answer in your brief to us
23 was, no, it wasn't misconduct, because she did different
24 testing with a different person, and that should
25 suffice.

1 Why, then, would it be improper for us to seek to
2 know the basis upon which that other testing was
3 rendered, like the material that doctor considered in
4 forming his opinion? You've asked us to accept that
5 testing in lieu of the testing we requested. So why
6 don't we then have an opportunity to inquire about the
7 reliability or the basis of that testing?

8 MR. DOLIN: Your Honor, respectfully, I would
9 again say that this Committee is not a proper body to
10 conduct an evaluation or examination for these
11 proceedings because --

12 JUDGE TARANTO: And from that answer, what you
13 submitted from Dr. Rothstein counts for nothing, because
14 it cannot be examined under Daubert standards.

15 MR. DOLIN: What we have submitted from
16 Dr. Rothstein is -- mostly was a point of information
17 that the Committee could choose to credit or not credit
18 as it wishes. Our response was to the Committee's
19 inquiry as to Judge Newman's cooperation, or lack
20 thereof, her reason for it, and the appropriate sanction
21 for doing so if she didn't cooperate.

22 We wanted the Committee --

23 CHIEF JUDGE MOORE: But didn't you tell us in
24 your July 5th submission that this Dr. Rothstein report
25 should put an end to the concern about Judge Newman's

1 medical history and should, therefore, obviate the
2 concern of misconduct for not taking the testing that
3 was required?

4 MR. DOLIN: I've mentioned the report or we've
5 mentioned the report as part of the broader information
6 to the Committee that should, in our view, frame this
7 proceeding that should have never started to a close.
8 If you look at --

9 CHIEF JUDGE MOORE: This examination should
10 obviate the need for any further testing.

11 MR. DOLIN: Correct, and any further proceedings
12 before this Committee or this Judicial Council, because
13 if you -- looking at Judge Newman's opinions submitted
14 since March, looking at Judge Newman's public
15 statements, looking at this evaluation, there is no
16 basis to conclude that she's in any way disabled.

17 CHIEF JUDGE MOORE: Well, this is not about
18 whether she's disabled, Counsel. This is about whether
19 or not this Committee had a reasonable basis to order
20 the medical testing, to ask to interview her, and to
21 request her medical records be provided to someone who
22 would evaluate her. This is not a proceeding about
23 whether she's disabled.

24 MR. DOLIN: So can we get -- and so this goes to
25 the answer I've provided to you, Judge Taranto, but can

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1 we go to the basis --

2 JUDGE TARANTO: Sure, we can get to that in just
3 one second. Just one thing that I wanted to make sure
4 about. After your July 5th responses, you know, we
5 issued an order two days later saying please supply us
6 three categories of documents, the unredacted version of
7 Dr. Rothstein, the actual filled-out MoCA form, and then
8 the category of written materials given to or relied
9 on -- I'm not sure what the word is -- accepted by
10 Dr. Rothstein, and in your July 12th response, you say,
11 as to that last category, the medical records, we're not
12 going to give you any more for the reasons we've already
13 discussed.

14 But the category, what we asked you about or
15 directed you to supply July 7th is not just medical
16 records. It was all materials. So, for example, that
17 would include all written materials, would include all
18 of the written materials that you have from this
19 proceeding, declarations and other things that supplied
20 the basis for concern about Judge Newman. In your July
21 12th letter, it doesn't say anything at all about that
22 category. Were those materials supplied to
23 Dr. Rothstein?

24 MR. DOLIN: Your Honor, are you referring to
25 affidavits, various affidavits that --

1 JUDGE TARANTO: All of the written materials that
2 you -- yes, that were a part of this proceeding that
3 have been given to you as undergirding the -- in
4 particular the May 16th order for --

5 MR. DOLIN: It is -- it is my understanding that
6 materials that are sealed were not provided to
7 Dr. Rothstein.

8 CHIEF JUDGE MOORE: What about the orders? Were
9 any of the orders which have been made public provided
10 to Dr. Rothstein?

11 MR. DOLIN: I don't know that he's reviewed the
12 orders either.

13 CHIEF JUDGE MOORE: I'm sorry. I couldn't hear
14 you.

15 MR. DOLIN: I do not know whether he reviewed the
16 orders either.

17 CHIEF JUDGE MOORE: But were they provided to
18 him? You don't know whether he reviewed them --

19 MR. DOLIN: I was not in the room, Your Honor.

20 CHIEF JUDGE MOORE: Pardon?

21 MR. DOLIN: I was not in the room, Your Honor.

22 CHIEF JUDGE MOORE: Oh, so you don't know if
23 Judge Newman provided him with those orders?

24 MR. DOLIN: I can't comment on that.

25 JUDGE TARANTO: You can't?

1 MR. DOLIN: I can't comment on that as to whether
2 or not -- whether or not they were provided or whether
3 he reviewed them or -- et cetera. I do know that he
4 reviewed those materials that he deemed in his
5 professional judgment appropriate before administering
6 the test and reaching his conclusion and writing the
7 letter.

8 CHIEF JUDGE MOORE: Mr. Dolin, can you speak up
9 just a little bit? I'm having trouble hearing you.
10 Sorry.

11 MR. DOLIN: He was provided such materials as he,
12 in his professional judgment, of decades of experience,
13 and being a full professor at George Washington School
14 of Medicine, deemed appropriate to conduct his
15 examination and reach his conclusions, and I was not in
16 the room, and I'm -- you know, despite my medical
17 degree, I am not going to second-guess a full professor
18 of neurology --

19 CHIEF JUDGE MOORE: Well, let me ask you a couple
20 of questions about his report. We did ask you to come
21 here today prepared to discuss the report and his
22 scoring of the report. Is it true that Judge Newman
23 either had at the time of his evaluation a cast on her
24 arm or her right wrist?

25 MR. DOLIN: It is.

1 CHIEF JUDGE MOORE: And he says in two places she
2 was, therefore, unable to write. Is that correct?

3 MR. DOLIN: That's correct. She was advised
4 by -- she was advised by her orthopedic surgeon not to
5 hold a pen until the bone was healed.

6 CHIEF JUDGE MOORE: So not to hold a pen until it
7 healed. So she was not able to do any written part of
8 the MoCA, correct?

9 MR. DOLIN: Correct.

10 CHIEF JUDGE MOORE: Correct, okay. So I am going
11 to provide you with the MoCA, which is the same MoCA --
12 you can step forward if you don't have --

13 MR. DOLIN: I have it.

14 CHIEF JUDGE MOORE: You have it?

15 MR. DOLIN: I have it.

16 CHIEF JUDGE MOORE: I think you have a copy. So
17 this is the same thing we provided to you as an exhibit.

18 MR. DOLIN: Yep.

19 CHIEF JUDGE MOORE: And this is the MoCA.

20 MR. DOLIN: Yep.

21 CHIEF JUDGE MOORE: As you can see, across the
22 top, there are three portions of the MoCA that require
23 writing. There is what I'll call connect-the-dots. I'm
24 not a doctor, so I am going to use layman's language.

25 MR. DOLIN: Fair enough.

1 CHIEF JUDGE MOORE: Connect-the-dots on the left,
2 and there's copy a cube, and Dr. Rothstein noted that
3 she couldn't do either of those because she can't write
4 at all, right?

5 MR. DOLIN: Yes.

6 CHIEF JUDGE MOORE: Okay. So each of those is
7 worth one point, correct?

8 MR. DOLIN: Um-hum, yep.

9 CHIEF JUDGE MOORE: Okay. Then you have to draw
10 a clock where you actually fill in all the numbers and
11 put the hands of the clock on the correct time that's
12 assessed. If she can't write, how could she do that?

13 MR. DOLIN: Again, Your Honor, I'm -- I can't
14 comment on how she accomplished that task. I can
15 comment on Dr. --

16 CHIEF JUDGE MOORE: Did she accomplish that task?

17 MR. DOLIN: Again, I was not in the room. I --

18 CHIEF JUDGE MOORE: Okay. So do you understand
19 on the face of Dr. Rothstein's own report, there seems
20 to be an inconsistency? The inconsistency is he said
21 she was unable to write in two places. You confirmed
22 that she's been instructed by an orthopedic surgeon not
23 to even hold a pen.

24 MR. DOLIN: Yes.

25 CHIEF JUDGE MOORE: There are three parts of this

1 test that require writing. Dr. Rothstein said she
2 couldn't do two of the three of them because she
3 couldn't write, so how did she do the third?

4 MR. DOLIN: I suspect that there are ways to do
5 the third by either having the clock identified --

6 JUDGE PROST: Again, I'm sorry, I can't --

7 MR. DOLIN: I suspect there are ways to do it.
8 Instead of drawing it, you have a clock identified, as
9 well as time identified, et cetera.

10 CHIEF JUDGE MOORE: Actually, it turns out
11 there's not on the MoCA website. Do you know that the
12 MoCA website itself explains exactly how to administer
13 the test when you're unable to write? Let me provide
14 you with a copy of it. Here you go.

15 MR. DOLIN: Ah, was --

16 CHIEF JUDGE MOORE: And this is what they say all
17 qualified practitioners should do when a patient is
18 unable to write.

19 MR. DOLIN: So, with respect, Judge Moore --

20 CHIEF JUDGE MOORE: The MoCA website is -- yes?

21 MR. DOLIN: -- with respect, Judge Moore --

22 CHIEF JUDGE MOORE: Yes, yes?

23 MR. DOLIN: -- if it were up to me, I would rely
24 on several decades' worth of experience of a full
25 professor of neurology at one of the nation's leading

1 medical schools as opposed to a --

2 CHIEF JUDGE MOORE: Counsel, this whole professor
3 of neurology may generally be great, but his own report
4 is internally inconsistent. It says she couldn't write
5 in two places. You've confirmed she couldn't hold a
6 pen. He says because she couldn't write, she couldn't
7 connect the dots, and she couldn't copy a cube, but then
8 when it comes to drawing a clock, which is required by
9 the test to be drawn by the patient -- if the patient
10 can't write, according to the MoCA, they can't do any of
11 those three questions according to the MoCA's own
12 rubric.

13 So I'm wondering whether or not it's possible
14 that he erred in his report because he said she couldn't
15 write at all, but then he seems to have given her full
16 credit for drawing a clock.

17 MR. DOLIN: Of course, anything is possible.

18 CHIEF JUDGE MOORE: But that's why the Committee
19 has concerns and would like to see the document, is
20 because his report is internally inconsistent on its
21 face.

22 MR. DOLIN: Okay. If you'll permit me to finish
23 my answer I was beginning to go to, with respect, I
24 would put some trust in the -- or put trust in a full
25 professor of neurology and at one of the nation's

1 leading medical schools over a -- a well respected
2 judge's interpretation of a MoCA website. And so I
3 understand what you've read, Judge Moore. Nevertheless,
4 I suspect that Judge -- that --

5 CHIEF JUDGE MOORE: Why -- you haven't seen the
6 MoCA test result, have you?

7 MR. DOLIN: I have not.

8 CHIEF JUDGE MOORE: Okay. So you haven't seen
9 it. He says that she couldn't write, so she couldn't do
10 the written portion. You don't think it's fair for us
11 to be concerned that possibly he mis-scored the test
12 since he has given her credit for portions that require
13 writing on its face? Draw a clock?

14 MR. DOLIN: Again, I suspect -- I suspect that
15 Judge -- again, that -- not Judge -- that Dr. Rothstein
16 knows how to administer this test, knows how to score
17 it, and he was advised before -- in fact, when the test
18 was scheduled, he was advised before that Judge Newman
19 was in a cast, and he asked whether or not we should
20 wait --

21 JUDGE TARANTO: Would you agree -- I don't know
22 what kind of experience you have with respect to
23 expert-laden cases -- that highly credentialed experts
24 sometimes make mistakes?

25 MR. DOLIN: Of course. Everybody makes mistakes,

1 including this Committee, but --

2 JUDGE TARANTO: And we don't have the basis for
3 determining that in a document that you submitted to
4 obviate concern here.

5 MR. DOLIN: Perhaps, but, again, I think I would
6 go back to the point that this shouldn't be here in the
7 first place, that that's my -- I do want to get back to
8 the numbers, and so because Judge Moore asked --

9 JUDGE PROST: Well, before you do that, just a
10 quick question, because you mentioned in passing and you
11 moved over it, and you made the statement -- I think I'm
12 accurately stating it -- that we had no idea who these
13 people were, the people that we identified as --

14 MR. DOLIN: No, we don't. I'm sure the Committee
15 does. We don't have any idea.

16 JUDGE PROST: Yes, yes, excuse me.

17 And did we not, in our order, when we identified
18 Dr. [REDACTED], give you a way, suggest that you feel free
19 to contact him if you had any questions about anything,
20 and did you take advantage of that? If you had a
21 concern that you don't know either his qualifications or
22 the qualifications of the doctors that were being
23 proposed, did you take advantage of going and asking
24 him?

25 MR. DOLIN: No, because one of the -- because we

1 would also -- we would not ever learn as to on what
2 basis was he selected. So, no, we don't know -- no, we
3 did not contact Dr. [REDACTED].

4 CHIEF JUDGE MOORE: Did you do any other research
5 at all on your own to ascertain the credentials of the
6 doctors whose names you were given as far back as April
7 7th?

8 MR. DOLIN: I have looked at their website
9 profiles.

10 CHIEF JUDGE MOORE: And did that cause you to
11 have reason to be concerned about their credentials?

12 MR. DOLIN: It didn't suggest to me that they are
13 either -- you know, that they -- they have their
14 diplomas, they have done their residency, they have
15 their licenses. That's all I know.

16 JUDGE PROST: Did you ask or inquire of
17 Dr. Rothstein if he had any information? He's a
18 renowned specialist that you've identified. Would he
19 be -- wouldn't he be an appropriate person to inquire in
20 terms of the credentials of these other people --

21 MR. DOLIN: No.

22 JUDGE PROST: -- if you know and trust him?

23 MR. DOLIN: No.

24 JUDGE PROST: He wouldn't be?

25 MR. DOLIN: No. We would not ask Dr. Rothstein

1 of his opinion of some other doctor in a different
2 state.

3 CHIEF JUDGE MOORE: Okay. Just to be clear,
4 Judge Prost said you know and trust him. I just want to
5 make it clear for you. For your purposes, for the
6 record --

7 MR. DOLIN: I don't.

8 CHIEF JUDGE MOORE: Yes, that's where I was
9 going. You didn't -- you didn't choose Dr. Rothstein,
10 correct?

11 MR. DOLIN: I did not. As with every American
12 who seeks medical care, generally in this country we
13 pick our own providers, and Dr. Newman picked this
14 provider.

15 CHIEF JUDGE MOORE: Her name is Judge Newman.

16 MR. DOLIN: She is actually a doctor as well.
17 She is a Ph.D.

18 CHIEF JUDGE MOORE: To your knowledge, did she
19 have a prior relationship with Dr. Rothstein before this
20 test?

21 MR. DOLIN: She knows -- she has known
22 Dr. Rothstein for some time.

23 CHIEF JUDGE MOORE: Personally or professionally?

24 MR. DOLIN: Both.

25 CHIEF JUDGE MOORE: Does that raise any concerns

1 with you about whether or not he's rendering an
2 independent judgment?

3 MR. DOLIN: It does not. He rendered this
4 judgment as -- again, in his capacity as a professor of
5 neurology. He put it on his letterhead. His license is
6 on the line --

7 CHIEF JUDGE MOORE: But he has both a personal
8 and a professional relationship with her.

9 MR. DOLIN: But that is not surprising. I mean,
10 people often have both a personal and professional -- I
11 to this day have a professional relationship -- personal
12 relationship with my pediatrician. That is not
13 surprising.

14 CHIEF JUDGE MOORE: Are you still seeing the
15 pediatrician? That was a joke, just trying to insert
16 some levity.

17 MR. DOLIN: Sometimes. I'll give you an answer.
18 Sometimes.

19 CHIEF JUDGE MOORE: Okay.

20 MR. DOLIN: Although not recently because she
21 retired.

22 CHIEF JUDGE MOORE: I really want to give you a
23 chance, and I know that it says three minutes left, but
24 I will extend the time because on several occasions you
25 sought to try to move to something that you wanted to

1 talk about, and we kept you on the topics that we wanted
2 to ask questions about.

3 So I feel like if there's something you wanted to
4 move to, I want to give you the chance to --

5 MR. DOLIN: No, I am here to answer the
6 Committee's questions, but I guess two points, and I'll
7 try to make them quick. One of the main concerns, I
8 suppose, of this Committee throughout was Judge Newman's
9 alleged delays in production of the opinions, including
10 that compared to an average time for -- for an average
11 judge of this Court and her, the difference between
12 those average times is 141 days. If you do the math,
13 between 199 that it takes Judge Newman and the 58 that
14 it takes an average judge --

15 CHIEF JUDGE MOORE: Fifty-three.

16 MR. DOLIN: -- 53, so it works out to be 141
17 days. In a recent paper by Dr. Katznelson, he
18 calculates that the average difference between a
19 unanimous opinion and an opinion with a dissent is 143
20 days. So a unanimous opinion issues 143 days earlier,
21 on average, than an opinion with a dissent or a
22 concurrent opinion. That seems to track pretty well
23 with Judge Newman's delays given the fact that she
24 dissents in more than half of the cases.

25 So her dissents -- her delays are not

1 extraordinary, but even more important -- and that's
2 leaving aside the Dr. Katznelson paper -- this is based
3 on the Court's own data. Judge Newman's delays between
4 2020 and 2021, where there was apparently no suspicion
5 of any disability, and 2021 to 2023, have been reduced.
6 She's now --

7 CHIEF JUDGE MOORE: Counsel -- Counsel, her
8 sittings were reduced. She sat 65 cases through the
9 second period where the average judge sat 128. She sat
10 closer to the normal level of everyone else in the
11 earlier period. So the explanation, with all due
12 respect, to why she might have been able to get the same
13 number of opinions out quicker is because she sat on,
14 like, half the cases than she had the previous time
15 period compared to how --

16 MR. DOLIN: Of course, Judge Moore, but that was
17 not her choice. You -- it's hard -- it's hard for me to
18 understand how --

19 CHIEF JUDGE MOORE: You say that was not her
20 choice? None of the time period that we measured, just
21 to be clear, was any period of time in which she was
22 prevented from sitting by any of us.

23 MR. DOLIN: My understanding, based on my time in
24 clerking on the Court and my conversations with Judge
25 Newman, is that judges don't just pick their cases, that

1 the assignment -- and also reviewing the clerical
2 procedure -- the assignment is done by the Chief Judge
3 together working with the Office of the Clerk. Maybe
4 I'm wrong.

5 CHIEF JUDGE MOORE: Completely false.

6 MR. DOLIN: So...

7 CHIEF JUDGE MOORE: The Chief Judge has no input
8 whatsoever --

9 MR. DOLIN: Not assignment, but assignment to the
10 panels, assignment to the panels, for how many --

11 CHIEF JUDGE MOORE: That's completely false. The
12 Chief Judge has no input whatsoever. Every judge does
13 their own selection.

14 MR. DOLIN: Fair enough. I apologize for that
15 misunderstanding.

16 And the second point that --

17 CHIEF JUDGE MOORE: And just to be clear, the
18 assignment of cases is random in the event that somehow
19 this transcript didn't make that clear. No judge
20 chooses their individual cases --

21 MR. DOLIN: Of course.

22 CHIEF JUDGE MOORE: -- and the assignment of
23 cases to each panel is random, but the judge's choice to
24 sit or not sit has always been the judge's choice
25 prior -- during these time periods that were measured.

Complaint No. 23-90015

7/13/2023

1 MR. DOLIN: Well, fair enough, and then I
2 apologize for my misunderstanding and my misreading of
3 the clerical procedures.

4 I guess -- I know I'm out of time, but I did want
5 to touch on the potential sanctions. As we indicated
6 in --

7 JUDGE PROST: I'm sorry?

8 MR. DOLIN: Potential sanctions.

9 JUDGE PROST: Thank you.

10 MR. DOLIN: As we indicated in our letter, not
11 only is the requirement that Judge Newman sit for
12 medical exam unprecedented, has never been done, I know
13 this Committee cited the Adams case. Judge Adams never
14 actually did sit for the medical exam and had no
15 sanctions imposed for it.

16 JUDGE TARANTO: I'm sorry, but there was an order
17 upheld by the Judicial Conference Committee that
18 required him to do so. Then on remand he -- basically
19 he reformed his behavior, and the Judicial Council,
20 after a certain waiting period, decided that the
21 proceeding didn't need to go forward. So there has been
22 an affirmed order compelling in that case a psychiatric,
23 I think, examination, correct?

24 MR. DOLIN: Which he declined to do and received
25 no sanction for it. Even on remand, he declined to sit

1 for -- because on remand, the judicial investigating --
2 the Special Committee requested that he sit for the exam
3 again. He declined to do it again. The Special
4 Investigative Committee recommended a six-month
5 suspension, which the Judicial Council of the Sixth
6 Circuit refused to endorse.

7 UNIDENTIFIED: Um-hum.

8 MR. DOLIN: So the requirement -- so Judge Newman
9 would be the first Judge in the history of this country
10 to sit for a forced medical examination, okay?

11 But on the sanctions, to get back to the six
12 months, one, of course, our position is no sanctions are
13 warranted because we do not believe that Judge Newman
14 either refused to cooperate or that, if she did, that
15 such refusal was without a good cause, but to the extent
16 that this Committee or this Judicial Council believes
17 that a sanction is warranted, we would note that Judge
18 Newman has already been suspended from sitting on cases
19 for six months.

20 My understanding is that the September calendar
21 is out, so it would be April, May, June, July, August,
22 September -- six months. If it takes some time for this
23 Committee to issue its report, then, of course, we will
24 have 21 days to review it and file our appeal to the
25 Judicial Council, et cetera, et cetera. That gets us

7/13/2023

Complaint No. 23-90015

1 probably into the October calendar. So at least on that
2 point, the sanction imposed, even taken into Judge
3 Adams' precedent, they suggested six months, and
4 certainly no more is appropriate here.

5 I'm happy to answer any other questions, but I do
6 have one question for the Committee if it will permit
7 me, and this goes back to, Judge Moore, at the very
8 beginning you said this matter is confidential, and I
9 said I understand, but I do want to go back to that.

10 We would like some guidance from the Committee as
11 to what can -- obviously we understand that no witness
12 names or witness statements can be discussed, I
13 understand that, and we have tried to keep that -- you
14 know, to keep that within that order, but we would like
15 to have some guidance as to which part of, beyond the
16 fact that this hearing has occurred, can be discussed.

17 CHIEF JUDGE MOORE: At this point, nothing. You
18 can submit a 23(b)(7) request to have the transcript
19 made public. You and I can work collectively on making
20 certain it's redacted. For example, quite a bit of
21 Judge Newman's personal medical information was
22 discussed, and I'm not 100 percent positive what about
23 that you would like to have redacted or not have
24 redacted. I don't remember if witness names were
25 discussed at all, but in any event, you know, I think

1 that probably we should wait and see the transcript and
2 then collectively work together to ensure that what is
3 released is something that we're both comfortable with.
4 Does that sound reasonable?

5 MR. DOLIN: That sounds reasonable. I'm
6 certainly happy to put in a formal 23(b)(7) request. I
7 think I've made it in my letter -- in my last letter to
8 the Committee, as well as here orally --

9 CHIEF JUDGE MOORE: If you want me to, I will
10 just assume this oral request is a 23(b)(7) request --

11 MR. DOLIN: Right.

12 CHIEF JUDGE MOORE: -- to have the transcript
13 made public --

14 MR. DOLIN: After --

15 CHIEF JUDGE MOORE: -- and if it's okay with
16 you --

17 MR. DOLIN: -- right, correct.

18 CHIEF JUDGE MOORE: -- I would like to review the
19 transcript first to ensure that nothing about it
20 contains information that should be otherwise kept
21 completely confidential.

22 MR. DOLIN: Of course, and vice versa.

23 And then, with that, I guess I'll close with
24 just, you know, again, reiterating our request that our
25 letter brief, which, of course, the Committee can, you

1 know, edit for -- I don't think that there's any witness
2 names there, but the letter brief as well as
3 everything -- all the submissions up until now be
4 released pursuant to 23(b)(7), and we have made those
5 requests in the submissions themselves.

6 CHIEF JUDGE MOORE: Anything further?

7 Okay. Thank you, Counsel. This case is taken
8 under submission.

9 (Whereupon, at 2:51 p.m. the hearing was
10 adjourned.)

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CERTIFICATE OF REPORTER

I, Susanne Bergling, do hereby certify that the foregoing proceedings were recorded by me via stenotype and reduced to typewriting under my supervision; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were transcribed; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

s/Susanne Bergling
SUSANNE BERGLING, RMR-CRR-CLR

Exhibit 15

Audio available at, <https://cafc.uscourts.gov/wp-content/uploads/JudicialMisconductOrders/July%2013,%202023%20Redacted%20Audio%20Recording.mp3>

Exhibit 16

From: [REDACTED]
To: [Chief Judge Kimberly A. Moore](#)
Cc: [Judge Richard G. Taranto](#); [Judge Sharon Prost](#); [REDACTED]
Subject: Re: interview
Date: Tuesday, April 11, 2023 3:54:09 PM

Yes, I will be in Your Honor's chambers at 1:00 tomorrow. Thank you for the flexibility.

Regards,

[REDACTED]

From: Chief Judge Kimberly A. Moore [REDACTED]
Sent: Tuesday, April 11, 2023 3:50 PM
To: [REDACTED]
Cc: Judge Richard G. Taranto [REDACTED]; Judge Sharon Prost
[REDACTED]; [REDACTED]
Subject: RE: interview

Would 1:00 pm tomorrow work?

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

From: [REDACTED]
Sent: Tuesday, April 11, 2023 3:47 PM
To: Chief Judge Kimberly A. Moore [REDACTED]
Cc: Judge Richard G. Taranto [REDACTED] Judge Sharon Prost
[REDACTED]; [REDACTED]
Subject: Re: interview

Hello Chief Judge Moore,

I appreciate the urgency of Your Honor's need to interview me in this matter. Would it be possible to conduct this interview tomorrow morning, April 12th? I have duties and commitments in my role as Judge Newman's clerk in New York for the remainder of this week. Please let me know if this would be suitable.

Regards,

[REDACTED]

Law Clerk to the Honorable Pauline Newman

From: Chief Judge Kimberly A. Moore [REDACTED]
Sent: Tuesday, April 11, 2023 2:40 PM

To: [REDACTED]

Cc: Judge Richard G. Taranto [REDACTED]; Judge Sharon Prost

[REDACTED]; Chief Judge Kimberly A. Moore [REDACTED]; [REDACTED]

[REDACTED]

Subject: interview

[REDACTED]

In connection with an on-going investigation being conducted by our court, the undersigned judges need to interview you regarding Judge Newman. There is some urgency to this matter and we propose to interview you at 10:00 am on Thursday, April 13, 2023 in 901. Your presence and cooperation is required by the court. At this stage of our investigation, we hope that this interview can be conducted informally. Please confirm by close of business today that you will attend.

Chief Judge Kimberly Moore
Judge Sharon Prost
Judge Richard Taranto

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

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COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PROCEEDING BEFORE

CHIEF CIRCUIT JUDGE KIMBERLY A. MOORE
CIRCUIT JUDGE SHARON PROST
CIRCUIT JUDGE RICHARD G. TARANTO

DEPOSITION OF [REDACTED]

Wednesday, April 12, 2023
9:00 a.m.

ALSO PRESENT:

[REDACTED], Esq.
[REDACTED], Witness
[REDACTED], Esq.

Reported by: Susanne Bergling, RMR-CRR

██████████
Court of Appeals for the Federal Circuit

4/12/2023

1 P R O C E E D I N G S
2 - - - - -
3 (Proceeding called to order
4 9:06 a.m.)

5 ██████████: I'm ██████████. I
6 represent ██████████ with respect to this
7 proceeding, and I wanted to say that there was
8 improper service of the subpoena. She was not
9 given reasonable notice. She was given notice
10 of less than 48 hours, which is not considered a
11 reasonable period, and she was also served by
12 ██████████, who is an agent of the
13 Court, and the Court is a party to this action,
14 and, therefore, is not a reasonable person to
15 choose to give service.

16 Also, the lack of timeliness imposed an
17 undue burden on my client.

18 CHIEF JUDGE MOORE: Okay.

19 LAW CLERK: ██████████, if you will
20 remain seated and raise your right hand, please.
21 Whereupon --

22 ██████████
23 a witness, called for examination, having
24 previously been duly sworn, was examined and
25 testified further as follows:

██████████
Court of Appeals for the Federal Circuit

4/12/2023

1 A. I do.

2 Q. How long have you been working with
3 Judge Newman?

4 A. Three years and a few months.

5 Q. We understand that you are her ██████████
6 clerk. Can you tell us about that role and what
7 your responsibilities are?

8 A. I am going to invoke my right under the
9 Fifth Amendment to avoid self-incrimination.

10 Q. You can't tell us what your
11 responsibilities are in your job?

12 A. I am --

13 ██████████: I am going to say asked
14 and answered. Objection.

15 ██████████: How does this have
16 anything to do with a criminal --

17 ██████████: This is not a criminal
18 case. It's a civil case.

19 ██████████: Exactly.

20 ██████████: You can invoke the
21 Fifth Amendment in a civil case.

22 ██████████: If there is some basis
23 for thinking they may be a crime involved --

24 ██████████: That's not the --
25 actually not the law.

██████████
Court of Appeals for the Federal Circuit

4/12/2023

1 CHIEF JUDGE MOORE: You are refusing to
2 tell us what your responsibilities are for Judge
3 Newman?

4 THE WITNESS: I am invoking my
5 privilege under the Fifth Amendment to avoid
6 self-incrimination.

7 JUDGE PROST: Are you aware whether or
8 not there any's document in Personnel or in
9 chambers that would describe the duties of your
10 position?

11 ██████████: Objection. There's too
12 many people questioning the witness. There's
13 only one person who's allowed to question the
14 witness at one time.

15 CHIEF JUDGE MOORE: With all due
16 respect, that's not correct. Under our rules,
17 that's not correct. This is not a formal court
18 proceeding. This is a special investigation.
19 The committee is required to be three people,
20 and we are required to all participate. So you
21 are incorrect under the rules of the proceeding.

22 ██████████: All right. Well, can
23 we have one person questioning her at one time,
24 because you're asking and answering the same
25 question repeatedly.

██████████
Court of Appeals for the Federal Circuit

4/12/2023

1 CHIEF JUDGE MOORE: No. You can lodge
2 your objection if you wish, but we are going to
3 proceed, because this is an interview by a
4 special committee under a judicial proceeding.

5 ██████████: All right. I object to
6 too many people questioning the witness, and
7 asked and answered.

8 JUDGE PROST: Maybe I was
9 misinterpreted. My question was not the same as
10 the one previously asked. I simply asked if
11 there was documentation she's aware of in our
12 Office of Personnel or in her chambers that
13 describes the duties of a law clerk in her
14 position.

15 THE WITNESS: I don't know.

16 CHIEF JUDGE MOORE: Do you manage or
17 otherwise review the work of other clerks in
18 chambers?

19 THE WITNESS: I, on advice of counsel,
20 am invoking my Fifth Amendment privilege to
21 avoid self-incrimination.

22 CHIEF JUDGE MOORE: How often do you
23 come into the building?

24 THE WITNESS: On advice of counsel, I
25 am invoking my Fifth Amendment privilege.

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1 CHIEF JUDGE MOORE: Do you ever
2 communicate with Judge Newman?

3 THE WITNESS: By advice of counsel, I
4 am invoking my Fifth Amendment privilege against
5 self-incrimination.

6 CHIEF JUDGE MOORE: How could you
7 incriminate yourself if -- by answering a
8 question of whether you communicate with the
9 person that you work for?

10 ██████████: Objection.
11 Argumentative. You can answer.

12 THE WITNESS: I am going to invoke my
13 right under the Fifth Amendment to avoid
14 self-incrimination.

15 CHIEF JUDGE MOORE: How could you
16 incriminate yourself by answering a question
17 about whether you communicate with the person
18 that you report to?

19 THE WITNESS: I am going to invoke my
20 right against self-incrimination under the Fifth
21 Amendment.

22 CHIEF JUDGE MOORE: How often do you
23 see Judge Newman in person?

24 THE WITNESS: I am going to invoke my
25 Fifth Amendment right.

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1 CHIEF JUDGE MOORE: Do you ever meet
2 with her by Zoom?

3 THE WITNESS: I am going to invoke my
4 Fifth Amendment right.

5 CHIEF JUDGE MOORE: Do you ever talk to
6 her on the phone?

7 THE WITNESS: I am going to invoke my
8 Fifth Amendment.

9 CHIEF JUDGE MOORE: How are cases
10 assigned in your chambers?

11 THE WITNESS: I am going to invoke my
12 Fifth Amendment right on that.

13 CHIEF JUDGE MOORE: How many bench
14 memos would you estimate that you have drafted
15 for Judge Newman in the last year?

16 THE WITNESS: I am going to invoke my
17 Fifth Amendment.

18 CHIEF JUDGE MOORE: Do you draft
19 opinions for her?

20 THE WITNESS: I am going to invoke my
21 Fifth Amendment.

22 CHIEF JUDGE MOORE: Does Judge Newman
23 discuss cases you?

24 THE WITNESS: I am not going to answer
25 that.

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1 ██████████: Let her finish the
2 question. Let her finish.

3 CHIEF JUDGE MOORE: Does Judge Newman
4 discuss cases with you in advance of oral
5 argument?

6 THE WITNESS: I am going to invoke my
7 Fifth Amendment.

8 CHIEF JUDGE MOORE: Are you aware of
9 any instances in which Judge Newman has offered
10 an opinion with a disposition contrary to what
11 was voted on by judges?

12 THE COURT: I am going to invoke my
13 Fifth Amendment.

14 CHIEF JUDGE MOORE: Are you aware of
15 any instances in which Judge Newman has changed
16 her mind about the appropriate disposition of a
17 case that you have been working on?

18 THE WITNESS: I am going to invoke my
19 Fifth Amendment.

20 CHIEF JUDGE MOORE: Judge Newman has
21 seven current cases assigned to her. I am going
22 to walk through each one and ask you if you're
23 working on that case.

24 One of the cases is ██████████
██████████. Are you currently working on that case?

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1 THE WITNESS: Fifth Amendment.

2 ██████████: Say the whole sentence,
3 please.

4 THE WITNESS: On advice of counsel, I
5 invoke my Fifth Amendment right against
6 self-incrimination.

7 CHIEF JUDGE MOORE: Judge Newman has a
8 case ██████████. Are you
9 working on that case?

10 THE WITNESS: On advice of counsel, I'm
11 invoking my Fifth Amendment right against
12 self-incrimination.

13 CHIEF JUDGE MOORE: ██████████
14 ██████████, a second case --
15 not the same one -- are you working on that one?

16 THE WITNESS: On advice of counsel, I
17 am invoking my Fifth Amendment right against
18 self-incrimination.

19 CHIEF JUDGE MOORE: ██████████
20 ██████████, are you working on that case?

21 THE WITNESS: On advice of counsel, I
22 am invoking my Fifth Amendment right against
23 self-incrimination.

24 CHIEF JUDGE MOORE: Counsel, could you
25 explain why you're advising your client to

1 refuse to answer the simplest of questions about
2 her job?

3 ██████████: That's privileged. My
4 communications with my client is privileged.

5 BY CHIEF JUDGE MOORE: Do you
6 understand, ██████████ that this is a
7 proceeding that is involving our investigation
8 into issues related to Judge Newman, and it
9 isn't an investigation into anything related to
10 you?

11 THE WITNESS: I'm invoking my right
12 against self-incrimination under the Fifth
13 Amendment.

14 CHIEF JUDGE MOORE: Do you understand
15 that refusing to cooperate with this proceeding
16 could result in a misconduct charge because
17 you're obligated as a judicial employee to
18 participate?

19 ██████████: Objection. She is
20 participating.

21 You can answer.

22 THE WITNESS: Yes.

23 CHIEF JUDGE MOORE: Do you understand
24 that the rules to this proceeding suggest that
25 any employee who fails to participate could be

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1 terminated for misconduct?

2 ██████████: Objection.

3 Argumentative and threatening.

4 You can answer.

5 THE WITNESS: No.

6 CHIEF JUDGE MOORE: Is it your intent
7 to answer every question that I ask you by
8 invoking the Fifth Amendment?

9 THE WITNESS: No.

10 CHIEF JUDGE MOORE: Okay, then I'll
11 continue.

12 ██████████, are you
13 working on that case with Judge Newman's
14 chambers?

15 THE WITNESS: On advice of counsel, I'm
16 invoking my right under the Fifth Amendment to
17 avoid self-incrimination.

18 CHIEF JUDGE MOORE: ██████████
19 ██████████. Are you working on that?

20 THE WITNESS: On advice of counsel, I
21 am invoking my Fifth Amendment right to avoid
22 self-incrimination.

23 CHIEF JUDGE MOORE: ██████████, how
24 could you incriminate yourself by simply
25 acknowledging whether you are working on any

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1 certain cases?

2 THE WITNESS: On advice of counsel, I
3 am going to invoke my Fifth Amendment right
4 against self-incrimination.

5 CHIEF JUDGE MOORE: ██████████
██████████. Are you working
7 on that case?

8 THE WITNESS: I am invoking my right
9 against self-incrimination under the Fifth
10 Amendment.

11 CHIEF JUDGE MOORE: ██████████
██████████. Are you working on
13 that case?

14 THE WITNESS: I am invoking my right
15 against self-incrimination under the Fifth
16 Amendment.

17 CHIEF JUDGE MOORE: ██████████
██████████. Are you working on that case?

19 THE WITNESS: On advice of counsel, I
20 am invoking my Fifth Amendment privilege against
21 self-incrimination.

22 CHIEF JUDGE MOORE: Do you ever send
23 Judge Newman drafts of opinions?

24 THE WITNESS: On advice of counsel, I
25 am invoking my right against self-incrimination

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1 under the Fifth Amendment.

2 CHIEF JUDGE MOORE: On average, how
3 many drafts of an opinion does Judge Newman
4 receive before the opinion gets circulated to
5 the panel?

6 THE WITNESS: On advice of counsel, I
7 am invoking my Fifth Amendment right against
8 self-incrimination.

9 CHIEF JUDGE MOORE: How could you
10 possibly incriminate yourself by revealing how
11 many drafts of opinions are created?

12 ██████████: Objection.
13 Argumentative. You can answer.

14 THE WITNESS: On advice of counsel, I'm
15 invoking my right against self-incrimination
16 under the Fifth Amendment.

17 CHIEF JUDGE MOORE: She didn't advise
18 you to say that it was the Fifth Amendment and
19 that you shouldn't answer. She actually said
20 you could answer.

21 ██████████: She can answer however
22 she wants.

23 CHIEF JUDGE MOORE: But she started by
24 saying that, on advice of counsel, she was doing
25 it, but you didn't actually give her that

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1 advice. So is it your decision, then, that it's
2 a Fifth Amendment privilege that you would
3 incriminate yourself if you answered the
4 question?

5 ██████████: Objection.
6 Argumentative.

7 THE WITNESS: Yes.

8 CHIEF JUDGE MOORE: Does Judge Newman
9 have any physical health issues that you're
10 aware of?

11 THE WITNESS: On advice of counsel, I
12 am invoking my right under the Fifth Amendment
13 for self-incrimination.

14 CHIEF JUDGE MOORE: How could you
15 incriminate yourself under the Fifth Amendment
16 by telling us whether the Judge has any health
17 issues?

18 THE WITNESS: On advice of counsel, I
19 am invoking my Fifth Amendment right against
20 self-incrimination.

21 JUDGE PROST: Can I interrupt and ask,
22 I think you had said earlier that there might be
23 a line of questioning in which you would not
24 invoke the Fifth Amendment with respect to your
25 duties, or did I misunderstand?

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1 THE WITNESS: You did not
2 misunderstand.

3 JUDGE PROST: So there are certain
4 things that you would be prepared to discuss in
5 response to questions, so could you give us some
6 indication about where that line is drawn to
7 save us all a lot of time?

8 THE WITNESS: Until you ask a question,
9 I can't answer that.

10 CHIEF JUDGE MOORE: Why don't we take a
11 five-minute break.

12 ██████████: And can I get your
13 card?

14 CHIEF JUDGE MOORE: I don't have a
15 card.

16 ██████████: Can I get name?

17 CHIEF JUDGE MOORE: Chief Judge Moore.

18 ██████████: Okay.

19 (A brief recess was taken.)

20 CHIEF JUDGE MOORE: Can we go back on
21 the record?

22 ██████████: Before we continue, I
23 just want to know who you are at the end of the
24 table. That's the one person that my client
25 doesn't know who you are.

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1 ██████████ : ██████████, general
2 counsel.

3 ██████████ : Okay.

4 JUDGE PROST: Let me just, in order to
5 expedite this for all of us, I guess I am going
6 to probe further, and you'll say what you say,
7 but I guess we are in need -- or I feel I'm in
8 need of some guidance in terms of getting you to
9 respond to questions we have.

10 So I guess are there -- I would like to
11 ask if there are any conditions, preconditions,
12 that would provide you comfort or a basis for
13 answering -- we've already had a number of
14 questions, you know, the type of questions
15 related to your job responsibilities and your
16 work. Are there any conditions that we could
17 provide that would permit you to respond?

18 THE WITNESS: I don't understand the
19 question. Can you rephrase that?

20 JUDGE PROST: I guess I don't know how
21 to restate it other than conditions,
22 preconditions. I mean, just off the top of my
23 head, this isn't apt necessarily, but just
24 immunity, I mean, is that the kind of thing that
25 you are -- would satisfy you? That's just

1 really off the top of my head.

2 THE WITNESS: No, no.

3 JUDGE PROST: So there are no
4 conditions that you can think of, such as
5 immunity, that would allow you to answer the
6 questions?

7 THE WITNESS: For the questions already
8 asked, no.

9 JUDGE PROST: The type -- yeah, the --
10 okay.

11 And then I guess -- and this follows up
12 to my question earlier about can you give us
13 some guidance in order to expedite this in terms
14 of you -- I think you noted that there might be
15 questions you would be willing to answer.

16 THE WITNESS: Yes.

17 JUDGE PROST: If you could give us any
18 guidance, would that be -- for example, we think
19 we have already asked questions related to your
20 job duties and responsibilities. Are there
21 questions in that realm that you'd be willing to
22 answer or is that category off the table?

23 THE WITNESS: That category is off the
24 table.

25 JUDGE PROST: I'm trying to think

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1 generally what I --

2 ██████████: Can you tell us what
3 categories are on the table?

4 THE WITNESS: I am not going to give
5 you questions to ask.

6 ██████████: We're asking for topics
7 of questions.

8 THE WITNESS: I understand. I can't
9 give you topics either. I don't know what you
10 want to know. I've been given absolutely no
11 information what this is about. So I can't
12 anticipate what you might ask.

13 JUDGE PROST: And are you willing to
14 provide a further basis or information as to
15 your invocation of the privilege just so that
16 maybe there's some way to make you more
17 comfortable -- yes, ma'am?

18 ██████████: And objection to that,
19 just because anything related to what we said is
20 privileged and confidential. So anything
21 relating to her advice of counsel, I would tell
22 her not to answer that question.

23 JUDGE TARANTO: If we are in the
24 position of having to decide whether you're
25 violating a duty of cooperation, we would want

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1 to know whatever you could tell us about the
2 basis for invoking a privilege against
3 self-incrimination. Is there anything you can
4 tell us to --

5 THE WITNESS: Not at this time, do I
6 feel comfortable divulging what we've discussed
7 during --

8 JUDGE TARANTO: I didn't ask you about
9 what you discussed. I asked about what basis
10 might there be to help us think about the
11 question of duty of cooperation.

12 THE WITNESS: On advice of counsel, I
13 am not going to answer the question under the
14 Fifth Amendment right against self-
15 incrimination.

16 JUDGE TARANTO: And does the category
17 exclusion that you mentioned in reference to
18 work in chambers also apply more generally to
19 your dealings with Judge Newman?

20 ██████████: Objection. Confusing
21 question. I didn't understand.

22 JUDGE TARANTO: You answered the
23 question from Judge Prost that the category of
24 your work in chambers was -- I think your
25 language was "off the table." Does the same

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1 apply to a category of questions about your
2 dealings with Judge Newman?

3 A. Yes.

4 Q. Okay.

5 ██████████: Can you explain to us --
6 I'm asking the attorney -- when the Fifth
7 Amendment can be invoked?

8 ██████████: The Fifth Amendment can
9 be invoked in a civil case by a nonparty.

10 ██████████: I'm not asking what
11 proceeding types it can be invoked in, but the
12 basis on which it can be invoked.

13 ██████████: It can be invoked when
14 the nonparty has a risk of self-incrimination.

15 ██████████: A risk of self-
16 incrimination in a criminal proceeding
17 or evidence used against them. Is that correct?

18 ██████████: Evidence that can be
19 used against them.

20 ██████████: And can you try to
21 explain, on whatever basis you can, what
22 reasonable basis would come up here?

23 ██████████: I cannot at this time.

24 ██████████: Because it's difficult
25 for us to understand why some of the questions

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1 about -- any of the questions being answered
2 have anything to do with --

3 ██████████: Anything I would
4 respond to that would relate to my attorney-
5 client privilege, of advice that I have given to
6 my client.

7 CHIEF JUDGE MOORE: ██████████, before
8 today, were you aware of a potential judicial
9 disability proceeding involving Judge Newman?

10 THE WITNESS: Yes.

11 CHIEF JUDGE MOORE: How did you become
12 aware of it?

13 THE WITNESS: On advice of counsel, I
14 am going to invoke my Fifth Amendment right
15 against self-incrimination.

16 ██████████: Why did you answer the
17 first question and not this one?

18 THE WITNESS: On advice of counsel, I
19 am going to invoke my Fifth Amendment right
20 against self-incrimination.

21 CHIEF JUDGE MOORE: Have you read any
22 documents given to Judge Newman in this case?

23 THE WITNESS: On advice of counsel, I
24 am going to invoke the Fifth Amendment right
25 against self-incrimination.

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1 CHIEF JUDGE MOORE: Do you understand
2 that this judicial disability proceeding is
3 required to be confidential?

4 THE WITNESS: Yes.

5 CHIEF JUDGE MOORE: Do you understand
6 that if you were to share information about it
7 with others, that that would be a breach of the
8 rules for this proceeding?

9 THE WITNESS: Yes.

10 CHIEF JUDGE MOORE: If I tell you right
11 now that we will grant you immunity and not
12 prosecute you, not find it to constitute an act
13 of misconduct, whatever you tell us you have
14 shared or have not shared, would you be willing
15 to answer questions then?

16 THE WITNESS: No.

17 CHIEF JUDGE MOORE: Why?

18 THE WITNESS: On advice of counsel, I
19 am going to invoke my Fifth Amendment right
20 against self-incrimination.

21 CHIEF JUDGE MOORE: There is no law
22 that prevents you from sharing this information.
23 It is just rules of our Court that says you
24 can't share confidential information. So if
25 we're willing to grant you immunity, guarantee

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1 that you will not be found guilty of misconduct
2 for any acts of sharing that you may have
3 participated in, why can't you answer these
4 questions?

5 ██████████: Objection. That goes
6 to attorney-client privilege, but you can answer
7 the -- it goes to privilege, but you can answer.

8 THE WITNESS: On advice of counsel, I
9 am going to invoke my Fifth Amendment right
10 against self-incrimination.

11 CHIEF JUDGE MOORE: Have you spoken to
12 others about this proceeding?

13 THE WITNESS: On advice of counsel, I
14 am going to invoke my Fifth Amendment right
15 against self-incrimination.

16 ██████████: Can you explain the
17 basis for your right against invoking the
18 privilege?

19 THE WITNESS: By advice of counsel, I
20 am going to invoke my Fifth Amendment --

21 ██████████: Or can counsel explain
22 the reason?

23 ██████████: Not at this time, no.

24 ██████████: So there is no stated
25 basis for invoking the privilege?

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1 ██████████: There is a basis.
2 There is a basis, but the basis is what I've
3 discussed with my client, so it's privileged and
4 confidential, and I can't discuss it with you.

5 CHIEF JUDGE MOORE: But, Counsel, you
6 are giving her advice not to answer questions in
7 an investigation about a judge. It doesn't have
8 anything to do with her.

9 So can you explain to us why you're
10 advising her not to answer these questions?

11 ██████████: Not at this time.

12 JUDGE PROST: When you say "not at this
13 time," does that suggest that if you had more
14 time, if you need more time, that you don't want
15 to do it in this setting -- in other words, you
16 would provide it to us in writing at some other
17 time -- when you say not at this time, I just
18 want clarification, not at this --

19 ██████████: Not in this setting,
20 not given what -- she had exactly one day to
21 prepare for this interview with you guys, and,
22 therefore, she hasn't had time to prepare her
23 answers, and right now she needs to have the
24 time to -- to have her interview in a timely
25 manner, which she was not allowed to do.

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1 CHIEF JUDGE MOORE: Oh, so, please,
2 help me understand. So if we gave you a week,
3 would you be prepared to come back and answer
4 the questions at that time, because if you just
5 need time, we are certainly willing to give you
6 time.

7 ██████████: Nope. She would still
8 not answer the questions.

9 CHIEF JUDGE MOORE: But your stated
10 reason was that she didn't have time to prepare.

11 ██████████: Right, which she didn't
12 have time to prepare.

13 CHIEF JUDGE MOORE: But we are happy to
14 give you that time.

15 THE WITNESS: But even with that time,
16 she should still invoke the privilege.

17 ██████████: On what basis?

18 ██████████: Again, I can't tell you
19 the basis because it's attorney-client
20 privilege.

21 CHIEF JUDGE MOORE: Do you understand
22 that if you talk about this proceeding with
23 others going forward, it would be an act of
24 misconduct?

25 THE WITNESS: No.

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1 CHIEF JUDGE MOORE: You don't
2 understand that this proceeding is required to
3 be kept confidential?

4 THE WITNESS: Yes.

5 CHIEF JUDGE MOORE: You do understand
6 that it's required to be confidential?

7 THE WITNESS: Yes.

8 CHIEF JUDGE MOORE: And do you
9 understand that the requirement it be
10 confidential bars you from discussing it with
11 other people?

12 THE WITNESS: Yes.

13 CHIEF JUDGE MOORE: So you understand
14 that you can't discuss this proceeding with
15 other people.

16 THE WITNESS: Yes.

17 CHIEF JUDGE MOORE: Do you understand
18 that if you do discuss it with other people,
19 that would be an act of misconduct?

20 ██████████: Do you understand that
21 that would be viewed by the committee as an act
22 of misconduct?

23 THE WITNESS: Are you telling me that
24 or are you asking me a question?

25 CHIEF JUDGE MOORE: Do you understand

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1 that it would be an act of misconduct to violate
2 the confidentiality?

3 THE WITNESS: I don't understand that.
4 I'm asking you -- if you're telling me that, I
5 will take -- I understand your words. I have no
6 knowledge of whether that would be considered an
7 act of misconduct or not.

8 CHIEF JUDGE MOORE: The rules regarding
9 this proceeding require that every judicial
10 employee maintain all aspects of it in
11 confidentiality. Did you know that?

12 THE WITNESS: I know that the statute
13 requires that it is a confidential proceeding.
14 That is all that I know.

15 CHIEF JUDGE MOORE: Are you familiar
16 with the rules regarding this proceeding?

17 THE WITNESS: No.

18 CHIEF JUDGE MOORE: Counsel, if you are
19 going to represent your client, I would suggest
20 that you get a copy of these rules, because,
21 ██████████, anyone that you share even the fact
22 of this proceeding with is a breach of the
23 rules.

24 So going forward, it would be
25 considered an act of misconduct if you speak

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1 with people, any people, about this proceeding.

2 Do you now understand what I'm telling you?

3 THE WITNESS: I understand your words,
4 yes.

5 CHIEF JUDGE MOORE: Will you agree not
6 to speak to anyone about these proceedings?

7 THE WITNESS: On advice of counsel, I
8 am going to invoke my Fifth Amendment right to
9 avoid self-incrimination.

10 CHIEF JUDGE MOORE: Does that mean you
11 are not --

12 THE WITNESS: Can we take a break,
13 please?

14 CHIEF JUDGE MOORE: Sure.

15 (A brief recess was taken.)

16 ██████████: If you could ask your
17 last question.

18 CHIEF JUDGE MOORE: Will you agree not
19 to speak to anyone about these proceedings?

20 THE WITNESS: Yes.

21 JUDGE TARANTO: I want to ask one -- at
22 least one followup question on this categories
23 of subject matter, and I think you've identified
24 two that you are -- that you view as off the
25 table for present purposes. One had been work

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1 in chambers. I think I asked you a question, to
2 which you gave the same answer, off the table,
3 about dealings with Judge Newman.

4 I'm going to ask the same question
5 about your perceptions of Judge Newman and her
6 ability to carry out her job.

7 THE WITNESS: On advice of counsel, I
8 am going to invoke the Fifth Amendment against
9 self-incrimination.

10 JUDGE TARANTO: For that category as
11 well?

12 THE WITNESS: Yes.

13 CHIEF JUDGE MOORE: Just to make sure
14 that we have a clear record for future purposes,
15 when you agreed that you will not speak to
16 anyone about these proceedings, that includes
17 people in chambers, people outside of the Court.
18 Do you understand that?

19 THE WITNESS: Yes.

20 CHIEF JUDGE MOORE: That includes the
21 fact of a disability proceeding as well as this
22 interview. Do you agree with that?

23 THE WITNESS: Yes.

24 CHIEF JUDGE MOORE: So you will not
25 disclose with anyone or discuss with anyone this

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1 interview, correct?

2 THE WITNESS: Yes.

3 CHIEF JUDGE MOORE: Has Judge Newman
4 instructed you in any way about how to testify
5 today?

6 THE WITNESS: On advice of counsel, I
7 would like to invoke my Fifth Amendment right
8 against self-incrimination.

9 CHIEF JUDGE MOORE: Has Judge Newman
10 asked you or encouraged you to talk about these
11 proceedings with other people?

12 THE WITNESS: On advice of counsel, I
13 am going to invoke my Fifth Amendment right
14 against self-incrimination.

15 CHIEF JUDGE MOORE: Do you understand
16 that under the law, when you invoke a Fifth
17 Amendment right to invoke self-incrimination,
18 that that allows a body to draw adverse
19 inferences against you with regard to every
20 question that you invoke the privilege?

21 THE WITNESS: Yes.

22 CHIEF JUDGE MOORE: Have you ever
23 stolen money from the Court?

24 ██████████: Objection.

25 Argumentative. You can answer.

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1 THE WITNESS: No.

2 CHIEF JUDGE MOORE: Do you ever perform
3 any legal work related to any case here at the
4 Court?

5 THE WITNESS: I don't understand your
6 question.

7 CHIEF JUDGE MOORE: Do you ever work on
8 any case here at the Court?

9 THE WITNESS: Yes.

10 CHIEF JUDGE MOORE: Do you work on any
11 currently pending cases here at the Court?

12 THE WITNESS: On advice of counsel, I
13 am going to invoke my Fifth Amendment right
14 against self-incrimination.

15 CHIEF JUDGE MOORE: If you aren't
16 working on any pending cases in front of the
17 Court, what are you doing?

18 THE WITNESS: On advice of counsel, I
19 am going to invoke my Fifth Amendment right
20 against self-incrimination.

21 ██████████: Have you ever discussed
22 as a matter with anybody else, outside the
23 Court, the judicial proceedings, judicial
24 disability proceedings?

25 THE WITNESS: On advice of counsel, I

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1 am going to invoke my Fifth Amendment right
2 against self-incrimination.

3 CHIEF JUDGE MOORE: Have you discussed
4 the judicial proceedings in this matter with
5 people outside the Court at Judge Newman's
6 direction?

7 THE WITNESS: On advice of counsel, I
8 am going to invoke my Fifth Amendment right
9 against self-incrimination.

10 JUDGE TARANTO: And just circling back
11 for a little clarification for my understanding,
12 you initially expressed concern about the short
13 time frame you had to prepare for this, and then
14 what I understood that Chief Judge Moore asked,
15 if we gave you additional time that you
16 considered reasonable, if that would change your
17 responses you had to the questions that have
18 arisen today, and I think your answer was no,
19 but I just want to confirm that.

20 THE WITNESS: It would not.

21 JUDGE TARANTO: It would not change.
22 So it's nothing that -- no matter how much time
23 you had, this would remain the same.

24 THE WITNESS: Yes.

25 CHIEF JUDGE MOORE: Can you give us

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1 some indication of why you believe that any of
2 these questions could cause you to incriminate
3 yourself?

4 ██████████: Objection. Calls for
5 privileged communication.

6 CHIEF JUDGE MOORE: No. I'm asking her
7 for her belief, not anything about any
8 communication.

9 THE WITNESS: On advice of counsel, I
10 am going to invoke my Fifth Amendment right
11 against self-incrimination.

12 CHIEF JUDGE MOORE: Can you give us the
13 names of your co-clerks in chambers?

14 THE WITNESS: ██████████
██████████

16 CHIEF JUDGE MOORE: And how long have
17 you worked with each of them?

18 THE WITNESS: ██████████ is, I believe,
19 two and a half years, roughly. ██████████ is
20 six months. ██████████ is three, four
21 months.

22 CHIEF JUDGE MOORE: Can you remember an
23 instance where I came down to chambers and spoke
24 to all of you?

25 THE WITNESS: Yes.

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1 CHIEF JUDGE MOORE: Do you remember
2 that that instance involved Judge Newman
3 disclosing confidential or sensitive ██████████
4 information ██████████?

5 THE WITNESS: On advice of counsel, I
6 am going to invoke my Fifth Amendment right
7 against self-incrimination.

8 CHIEF JUDGE MOORE: Did Judge Newman
9 disclose confidential or sensitive ██████████
10 information ██████████?

11 THE WITNESS: On advice of counsel, I
12 am going to invoke my Fifth Amendment right
13 against self-incrimination.

14 CHIEF JUDGE MOORE: After or at that
15 meeting, I asked you to agree that you would not
16 discuss that sensitive confidential information
17 further. Do you remember that?

18 THE WITNESS: I do.

19 CHIEF JUDGE MOORE: Did you agree?

20 THE WITNESS: Yes.

21 CHIEF JUDGE MOORE: Have you discussed
22 it since then?

23 THE WITNESS: No.

24 CHIEF JUDGE MOORE: Do you ever work
25 with ██████████?

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1 THE WITNESS: I do.

2 CHIEF JUDGE MOORE: Can you tell me
3 what his role in chambers is?

4 THE WITNESS: On advice of counsel, I
5 am going to invoke my Fifth Amendment right
6 against self-incrimination.

7 ██████████: Can you explain a basis
8 for invoking the privilege?

9 ██████████: Again, the privilege is
10 invoked because of the communications I had with
11 my client, so I'm not willing to discuss it.

12 CHIEF JUDGE MOORE: Will you provide us
13 with a basis for believing that these kinds of
14 questions could cause you to incriminate
15 yourself?

16 THE WITNESS: Not at this time.

17 CHIEF JUDGE MOORE: And, Counsel, do I
18 understand that you will also not provide us
19 with any basis for how any of these questions
20 could incriminate her?

21 ██████████: Not at this time.

22 ██████████: Is there a time that
23 would be appropriate or acceptable to you or
24 that you could do it?

25 ██████████: I'm not sure. I don't

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1 know.

2 ██████████: Can you do it in a week?

3 ██████████: No. I don't know. I'm
4 not sure.

5 ██████████: If you were to do it,
6 will you provide a written response?

7 ██████████: It depends on who you
8 order to do what.

9 ██████████: The basis for invoking
10 the privilege to these questions.

11 ██████████: At the moment,
12 everything related to why my client is invoking
13 the privilege is privileged and confidential,
14 and I cannot tell you why we're invoking the
15 privilege without violating attorney-client
16 privilege.

17 CHIEF JUDGE MOORE: ██████████, do you
18 understand that we could grant you immunity from
19 any sort of misconduct proceeding in this
20 context?

21 THE WITNESS: No.

22 CHIEF JUDGE MOORE: If we did grant you
23 immunity from any sort of misconduct proceeding,
24 would you be willing to answer all of the
25 questions that we've asked today?

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1 THE WITNESS: No.

2 CHIEF JUDGE MOORE: Are there any of
3 the questions we've asked today that you would
4 be willing to answer?

5 THE WITNESS: I would continue to
6 invoke my Fifth Amendment right for the
7 questions for which I've already invoked my
8 Fifth Amendment right.

9 JUDGE TARANTO: If immunity included
10 criminal immunity from the United States
11 Attorney, what would your answer be to that
12 question?

13 THE WITNESS: No.

14 ██████████: When you say "no," you
15 mean you still won't answer the questions?

16 THE WITNESS: I will not answer those
17 questions.

18 ██████████: So my understanding is
19 under no circumstances will you answer
20 questions. Is that fair to say?

21 THE WITNESS: For those questions that
22 I've already invoked, I will continue to invoke.

23 ██████████: Okay, thank you.

24 JUDGE TARANTO: And let me just, I
25 guess, add any state-level criminal immunity,

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1 too, if that also was provided, would you answer
2 the questions?

3 THE WITNESS: I don't understand your
4 question. Could you rephrase it?

5 JUDGE TARANTO: Sure.
6 Self-incrimination is a concern about criminal
7 prosecution. If the sovereign United States
8 provided you immunity from criminal prosecution
9 and a sovereign of any relevant state or --
10 let's add in the District of Columbia -- did the
11 same, would you still invoke your Fifth
12 Amendment privilege?

13 THE WITNESS: Yes.

14 CHIEF JUDGE MOORE: Are there any
15 circumstances that would permit you to answer
16 the questions and not invoke your Fifth
17 Amendment privilege as to the questions already
18 asked?

19 THE WITNESS: I can't speculate.

20 CHIEF JUDGE MOORE: I'm not asking you
21 to speculate. I'm saying what could we do to
22 make this a cooperative proceeding. That's all
23 I'm seeking.

24 THE WITNESS: I am cooperating. I'm
25 here.

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1 ██████████: Well, you're not
2 answering --

3 THE WITNESS: I'm answering those
4 questions that I can answer.

5 CHIEF JUDGE MOORE: But we asked some
6 very basic questions about your duties in
7 chambers or whether you've drafted opinions or
8 whether you've written a bench memo, and these
9 are typically jobs that all law clerks do, and
10 you've refused to answer any of those questions.

11 So I'm confused, why?

12 ██████████: And I'm just going to
13 say again that this goes to her privileged
14 communications with me, and she cannot answer
15 related to anything that we have discussed, but
16 you can answer her question.

17 THE WITNESS: There was no question.

18 CHIEF JUDGE MOORE: Actually, it was,
19 why? Why are you refusing to answer any
20 questions about your job duties in chambers?

21 THE WITNESS: On advice of counsel, I
22 am going to invoke my Fifth Amendment right
23 against self-incrimination.

24 JUDGE PROST: Is there a telework
25 policy in your chambers?

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1 THE WITNESS: On advice of counsel, I
2 am going to invoke my Fifth Amendment right
3 against self-incrimination.

4 CHIEF JUDGE MOORE: How many hours a
5 week do you work?

6 THE WITNESS: Forty to 100.

7 CHIEF JUDGE MOORE: And is that 40 to
8 100 for work you do for judicial matters here at
9 the Court?

10 THE WITNESS: Yes.

11 JUDGE PROST: And is that work
12 typically performed in person, in chambers, or
13 elsewhere?

14 THE WITNESS: On advice of counsel, I
15 am going to invoke my Fifth Amendment right
16 against self-incrimination.

17 CHIEF JUDGE MOORE: You've indicated
18 that you work 40 to 100 hours a week for
19 judicial matters here at the Court. Can you
20 give us any examples of work you've done in the
21 last week?

22 THE WITNESS: On advice of counsel, I
23 am going to invoke my Fifth Amendment right
24 under self-incrimination.

25 CHIEF JUDGE MOORE: Can you give us any

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1 examples of work you've done in the last year?

2 THE WITNESS: On advice of counsel, I
3 am going to invoke my Fifth Amendment right
4 against self-incrimination.

5 CHIEF JUDGE MOORE: What do you spend
6 the 40 to 100 hours a weeks doing?

7 THE WITNESS: On advice of counsel, I
8 am going to invoke my Fifth Amendment right
9 against self-incrimination.

10 JUDGE PROST: Were you hired as a term
11 law clerk or did the position convert after a
12 certain period of time?

13 THE WITNESS: It converted.

14 JUDGE PROST: Do you recall
15 approximately when?

16 THE WITNESS: At about two years,
17 roughly.

18 JUDGE PROST: And that's two years --
19 when did you start your employment here?

20 THE WITNESS: Early December of 2019,
21 and it converted in December -- November,
22 December of 2021.

23 CHIEF JUDGE MOORE: Did you tell anyone
24 that you were subpoenaed to appear here today?

25 THE WITNESS: Yes.

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1 CHIEF JUDGE MOORE: Who did you tell?

2 THE WITNESS: On advice of counsel, I
3 am going to invoke my Fifth Amendment right
4 against self-incrimination.

5 CHIEF JUDGE MOORE: We have an ongoing
6 judicial misconduct and disability proceeding.
7 I am going to instruct you now that you do not
8 delete any emails in your court account. Do you
9 understand that instruction?

10 THE WITNESS: Yes.

11 CHIEF JUDGE MOORE: Will you agree to
12 comply with that instruction?

13 THE WITNESS: Yes.

14 CHIEF JUDGE MOORE: ██████████, we
15 have no further questions at this time given
16 that you have taken off the table so many topics
17 related to your work here at the Court, and are
18 refusing to answer those questions.

19 We reserve the right to call you
20 again at some point in the future, and if at
21 some future date you can come up with
22 circumstances that you think would change
23 whether you're willing to cooperate or not,
24 please let us know.

25 THE WITNESS: Okay.

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1 CHIEF JUDGE MOORE: This concludes the
2 proceedings.

3 (Whereupon, at 10:15 a.m., the
4 deposition was concluded.)

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CERTIFICATE OF REPORTER

I, Susanne Bergling, do hereby certify that the foregoing proceedings were recorded by me via stenotype and reduced to typewriting under my supervision; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were transcribed; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.



SUSANNE BERGLING, RMR-CRR-CLR

AFFIDAVIT OF [REDACTED] [Affidavit 1]

1. My name is [REDACTED] and I worked as Judge Newman's paralegal from December 28, 2021 until April 19, 2023. The statements made in this affidavit come from my own personal observations and experiences to the best of my recollection.
2. I assisted Judge Newman with the day-to-day administration of her chambers, including: maintaining and updating her law library; preparing financial disclosure reports; maintaining chambers information and storage filing systems (electronic and paper); preparing orders, notices, and opinions for filing in the court's electronic and case management filing system; arranging meetings and conference agendas; providing assistance for law clerk orientation and training; providing chambers staff with assistance on the court's automated computer and software systems; monitoring deadlines, tasks, and determining need for action by Judge Newman; coordinating all general activities and serving as a liaison; performing a wide variety of special projects at Judge Newman's request; calendaring; receiving guests and visitors; scheduling and confirming appointments; helping prepare bench-books for argument; performing legal research for speeches and public appearances; tracking the status of draft opinions from Judge Newman's chambers; tracking draft opinions from other chambers that were circulated for vote; incorporating Judge Newman's edits; reviewing legal documents assigned by Judge Newman for completeness and accuracy; preparing draft opinions; and answering phones.
3. I provided the Special Committee investigating this matter a copy of reports that I routinely provided Judge Newman to monitor the status of opinions assigned to Judge Newman and the status of cases that Judge Newman was on but not the authoring judge. Those reports are labeled "Cases Assigned to Judge Newman Draft Tracker"; "Workload and Case Assignments" list; and "Cases Assigned to Other Panel Members." To the best of my knowledge, those reports were an accurate reflection of the status of cases in Judge Newman's chambers as of the time I provided the reports.
4. I was physically present in chambers almost every day. I typically worked from 7:30am to 4:30pm Monday through Friday. Judge Newman worked primarily remotely from her home, coming to the court approximately once or twice a month for the most part of my time at the court.
5. As part of my responsibilities, I had a one-on-one call with Judge Newman every workday at 9:30am to discuss these reports and the day-to-day administration of chambers, including Judge Newman's daily calendar. I also participated on

Zoom video calls with Judge Newman and her law clerks held every Monday at 12:00pm during which we discussed the status of chambers work.

6. About nine months ago, I witnessed Judge Newman needing to be assisted back to chambers from oral argument. I was told in Judge Newman's presence that she had fainted and could not make it back to chambers without help. I instructed Judge Newman to sit down by my desk in a chair to rest because I didn't feel comfortable having Judge Newman walking all the way across chambers to her desk. I wanted to monitor her condition for a period of approximately 10 to 15 minutes to ensure that she was safe to go home because she lived alone and would have no one at home to monitor her.
7. I have observed Judge Newman indicate on occasion that she needs to sit down because she lacked the energy to be able stand, which I attributed to forgetting to eat breakfast or staying up late working. I am also aware that chairs were placed along the length of the 8th floor hallway every 10 feet from our chambers to the judges' elevators because Judge Newman needed to take frequent breaks to walk the length of the hallway. At the end of the workday, Judge Newman would often have to sit to rest in the elevator bay outside the 8th floor prior to taking the elevator to the basement. I assisted Judge Newman by walking beside her when she departed to the basement to a staff member's car because I was afraid of her falling during the walk from the elevator to the car.
8. Judge Newman informed me that she liked to work on her couch at home and would fall asleep on seemingly a daily basis. Frequently on our 9:30am phone calls, when I would check in with Judge Newman about the previous workday, Judge Newman would say that she had been working on an opinion but that she was so comfortable on her couch that she had fallen asleep. Judge Newman routinely rested between the hours of 11:00am and 2:00pm, and I therefore tried to avoid calling Judge Newman until the late afternoon to avoid disturbing her and to allow Judge Newman to get her rest. I would only call Judge Newman if there was a filing notice that she was the action judge on because instructions would need to be sent to court services during court business hours.
9. I am aware that Judge Newman has had cardiac problems and has had at least one cardiac-related procedure. It is my understanding that Judge Newman regularly sees a cardiologist and audiologist in addition to seeing her primary care provider.
10. I have on multiple occasion seen Judge Newman have trouble recalling events and information. In my experience with Judge Newman, her memory loss and

confusion has increased significantly since I started at the court. On various occasions, I have also entered chambers and observed Judge Newman staring off into space with a blank look in her eyes. I would try and get Judge Newman engaged on something present because she seemed lost and confused.

11. On November 16, 2022, Judge Newman, the Circuit Librarian, [REDACTED], and I met to discuss a proposed display concerning Judge Newman's patent. On December 16, 2022, I presented to Judge Newman a draft of the narrative for the display and Judge Newman agreed to do a 3–4-minute audio recording. On January 4, 2023, I met with Judge Newman to select photos from her private personal collection for the display. On January 16, 2023, I again showed Judge Newman the pictures that she selected. However, on February 20, 2023, when Judge Newman was again shown the pictures, Judge Newman indicated that she had never seen them before and asked where I had gotten them. She seemed to have entirely forgotten about our prior recent meetings. I informed Judge Newman that the picture was taken in Cooperstown, NY in 1974 and was sent to her by the General Counsel of General Electronic Company and that I had provided this information to her on multiple previous occasions.

12. On Friday March [REDACTED], 2023, Judge Newman provided final edits of her dissent in [REDACTED] for upload to the Slip Op Application. The majority and dissent were released on Monday March [REDACTED], 2023. At chambers post-conference staff meeting on the very next day, Tuesday March [REDACTED], 2023, when discussing [REDACTED] ([REDACTED] PN, [REDACTED]), in which the [REDACTED], Judge Newman stated that the case reminded her of another matter, but she could not recall the case at all. I wrote "[REDACTED]" on a notepad because I was so concerned that [REDACTED] had been issued the day earlier and she couldn't remember. I spoke with [REDACTED] and [REDACTED] about this after Judge Newman left. [REDACTED] concurred that Judge Newman did not recall the opinion that was issued a day earlier. [REDACTED] thought it was [REDACTED] but could not confirm. I requested [REDACTED] and [REDACTED] to start having more intensive follow-up with Judge Newman on their cases. We discussed strategies to use during our weekly Zoom meetings. I informed them that it would be best if they picked up their oldest case presented it and developed a plan with Judge Newman to release within 2 weeks or less.

13. On our daily calls, I often needed to repeat information about the status of cases and opinions that were waiting for vote. In response to me bringing up cases that were awaiting her vote, Judge Newman would often tell me that she would try and review the draft that day, but I would not get any subsequent response

for weeks. Despite daily reminders, I was rarely successful in getting Judge Newman to get through our set agenda for the week. There were occasions when Judge Newman would tell me that she sent a vote out when the panel was still waiting for her vote. There were also occasions when Judge Newman had totally forgotten that the case was circulated to the panel for vote.

14. Over the last year, Judge Newman would make statements to me that her phone and computer were being “bugged” and “hacked” and that bloggers and the media were out to get her and bring her down. These would seem to occur at least once a week and most frequently on our Monday calls. I would follow up regularly with ITO, but ITO would inform me that there were no concerns or IT issues. I was very confused because no one else in chambers was having regular IT issues but Judge Newman seemed to have trouble on a weekly basis. I thought that Judge Newman was not able to keep up with the workload and that the statements about computer issues could have been a cover for her inability to keep up with her cases. She seemed constantly paranoid about this despite no actual basis for her to be concerned.
15. In my experience at the court, submitted cases are routinely circulated to other panel members for vote on the date of submission. I do not recall any case in which Judge Newman was ready to circulate a draft opinion to the other panel members by the submission date while I was working in Judge Newman’s chambers. Despite me prompting her, I would say it took her significantly longer than other chambers to circulate opinions on submitted cases. Judge Newman often declined to assign submitted cases to a law clerk to work on, saying she would rather first dig into the briefs. She would not follow up or respond to my requests to have a clerk assist with the preparation of a draft.
16. Frequently, I would encourage Judge Newman to assign pre-submitted cases to other panel members because of the backlog of Judge Newman’s docket. Judge Newman almost always refused to assign pre-submitted cases to other panel members because she was concerned that law clerks would not have any work to do or would run out of work.
17. On May █, 2022, I provided Judge Newman a completed first draft for review in the submitted case, █. My draft totaled 11 pages. This appeared to be a routine case that would merely require █. Having not received any response, I followed up with a short memo in May 2022. Judge Newman did not provide feedback or edits on my first draft until January █, 2023. Eight months

elapsed before I got any indication that Judge Newman had even reviewed the draft.

18. I was asked on another occasion to assist Judge Newman in drafting a submitted opinion in [REDACTED]. I was instructed by Judge Newman on multiple occasions during our Monday weekly Zoom chambers meetings not to send the draft for her review because she was working on other matters and that she would be caught up in a few days. The first draft was completed and saved on February [REDACTED], 2023. That case was submitted on February [REDACTED], 2023. When I left chambers, I was still waiting her approval to send the draft.
19. In my experience, similar requests from law clerks were repeatedly denied by Judge Newman during these meetings with months going by without any follow up by Judge Newman.
20. When Judge Newman would assign herself to author the opinion in an argued case, she would typically have a law clerk work on the first draft of the opinion for her review. In my experience, the law clerks turned in timely work product. For instance, a law clerk provided Judge Newman with a first draft opinion in [REDACTED] on January [REDACTED], 2023 (within 11 days of the date of submission). However, as of April [REDACTED], 2023, Judge Newman had not yet approved or asked me to incorporate any changes to the draft. Her standard practice was to make handwritten changes to drafts and then fax them to me to incorporate. That did not occur in that case. In [REDACTED], a law clerk provided Judge Newman a first draft on October [REDACTED], 2022 (10 days after submission). Judge Newman did not contact me to start making her edits to the draft until March [REDACTED], 2023. The amount of time between receiving a draft from a law clerk and Judge Newman turning to the drafts to make edits in [REDACTED] was typical of the delay in reviewing first draft opinions.
21. It was common for Judge Newman to go through multiple rounds of providing me with handwritten, faxed edits to drafts to incorporate before the drafts were returned to the law clerks. For instance, as of April [REDACTED], 2023, the Cases Assigned to Judge Newman report indicated "Draft # 15" for [REDACTED]. Law clerks then would often need to make substantial corrections to clean up and clarify these revisions because of the deterioration of the quality of the now-revised opinion.
22. I made Judge Newman aware on multiple occasions of the court's Clerical Procedure#3.5, which provides "[v]oting should be given priority in each chambers over other matters as a proven means of facilitating the work of the

court” and therefore “Judges shall vote on circulating precedential and nonprecedential opinions within five working days of receipt, or explain to the authoring judge why more time is needed.” However, in my experience, Judge Newman never followed this practice and stated to me that the rule did not apply to her in light of statements made to her by former Chief Judge Markey who at some time in the past told her she could take up to 30 days to vote.

23. Judge Newman would come to the National Courts Building primarily only on oral argument days and special events. Judge Newman was driven to and from the court by her [REDACTED] law clerk. It is my understanding that this law clerk would also drive Judge Newman to medical appointments and for special events and do her grocery shopping. The clerk would also help bring case materials back to Judge Newman’s home where Judge Newman primarily worked. When I was present at Judge Newman’s home, I saw folders and papers spread around and not organized. I offered to help organize her papers, but she declined. Particularly over the last few months, Judge Newman was having trouble keeping track of what case materials were at her home office and what case materials were in chambers. This was becoming very concerning to me because, for the most part, Judge Newman had been able to keep track of what case materials she had at her home office and now was unable to do so. She used to have everything prepared for oral argument. However, for the last three months, she would show up on argument days without case materials she would typically bring with her, and I would have to quickly try and get the same materials from the law clerks to ensure she was prepared for argument. This was very concerning that she would not be prepared for argument.

24. In early March 2023, Judge Newman disclosed to members of chambers that [REDACTED]. I confronted Judge Newman because disclosing [REDACTED] to her staff seemed entirely inappropriate and unnecessary, but she did not seem to understand the seriousness of the matter. To try and protect Judge Newman and make sure that such inappropriate disclosures were not repeated, I found it necessary to inform the Chief Judge about Judge Newman’s behavior. The Chief visited chambers the next day to speak with everyone, including Judge Newman, about the importance of maintaining such information confidential.

25. The nature of my job changed after the Chief Judge spoke to chambers.

26. Judge Newman and some of her law clerks stopped sharing information with me that was necessary to keep track of the status of cases in chambers and I was not even allowed to perform tasks I was previously handling. Judge Newman

did not provide me with any update or information about any changes to chambers' protocols or operating procedures.

27. Judge Newman stopped discussing work matters with me. Her tone on our daily 9:30am phone calls was now often angry and cold. Her refusal to discuss the day-to-day operations of chambers prevented me from performing my essential job duties. The only thing that she would discuss with me was when the Human Resources Department was going to post an advertisement for my job. Judge Newman refused or declined to take any action or respond to basic questions or requests related to the status of cases currently pending on her docket. She also refused to respond to basic questions about her calendar and daily schedule. This created a very hostile work environment for me, but I did not share this with anyone in chambers to protect Judge Newman.
28. Judge Newman even sent me a message along the lines of "Great, I'll be in those days," in response to me informing her that I would be out of the office, which I understood as suggesting she did not want to be in the office when I would also be there. I felt that she did not want me to be in chambers at all and that she wanted me gone. I was pained to get the message. However, I was also confused because she seemed to be obsessed with me being in chambers daily as her first question was always whether I was in chambers or at home.
29. Judge Newman wrongfully accused me of refusing to do work for her. Judge Newman requested that I make her edits to the most current version of a draft opinion she was working on with a law clerk. I informed Judge Newman that I was never sent the most current version of the draft to which she replied: "Are you refusing to do work?" She then said: "What is your problem, I've never had a problem with you doing work for me before." I told her there was no problem. Judge Newman then said: "What do I have to do, have another judge's paralegal do my work?" I responded, "No your honor, I do not think it would be appropriate for another judge's paralegal to do your work." To be clear, I was not refusing to do work. I simply couldn't do what she was asking because I had been cut off from communications.
30. Judge Newman withheld approval for leave and my timesheet. On March 30, 2023, Judge Newman verbally approved my request for annual leave for April 6- 7, 2023 so that I could visit my family for Easter. After returning from leave, I received an email from Human Resources requesting Judge Newman forward confirmation of the approval of my leave request so that Human Resources could then process my submitted timesheet. I called Judge Newman and informed her that my approval for leave needed to be confirmed immediately or I would not

receive my paycheck for that pay period. Judge Newman requested that I forward the email from Human Resources and stated that she would send confirmation of the annual leave approval right away. As requested, I forwarded the email from Human Resources to Judge Newman. Judge Newman, however, never acknowledged receipt of the email and declined to send confirmation of my annual leave to Human Resources as she had agreed to do. Instead, I had to send HR a separate email in which Judge Newman had stated to other judges that I would be away on vacation for those days to receive my paycheck.

31. On April 13, 2023, I brought my concerns that Judge Newman was being abusive and retaliating against me to the Director of Workplace Relations and filed a request for assisted resolution. I also informed the Chief Judge that I could no longer work in this environment because Judge Newman had become so hostile toward me. I asked the Chief Judge for an alternative work arrangement that would allow me to work outside chambers but allow Judge Newman to continue to contact me as usual so I could perform my work for her. On April 14, 2023, the Chief Judge agreed to inform Judge Newman that while I would continue to perform my duties as Judge Newman's paralegal, my workstation would be moved outside of chambers. That same day, my phone and computer were moved to the clerk's office.

32. Although my workstation was no longer located in Judge Newman's chambers, I continued to handle all my usual day-to-day responsibilities, including my 9:30am daily call with Judge Newman; watering the plants; going to chambers to check and circulate the mail; checking the fax machine; continuing to answer calls to chambers and relay messages; circulating opinions and votes; and reaching out to the court's Information Technology Office per usual procedure to set up calls for chambers at Judge Newman's request or when she had problems with her IT equipment.

33. On April 18, 2023, I called Judge Newman for our routine 9:30am call. She made several comments along the lines of "you deserted chambers," "when are you returning to chambers," "this isn't going to work," "when are you going to be back," and "you are not doing anything for chambers," and "none of the staff can get any of their work done because you are not in chambers." This was completely untrue given I was continuing to perform my responsibilities and I had to her satisfaction previously been able to do all my work at times teleworking in the past. I would describe Judge Newman's behavior on the call as aggressive, angry, combative, and intimidating. The call made me feel very uncomfortable, anxious, and insecure because I had no idea what Judge

Newman was going to do or what her response was going to be, and I felt that if I responded she would get angrier and more upset.

34. On April 19, 2023, I called Judge Newman for our routine 9:30am call. After I said good morning, Judge Newman again started to complain about the alternative work arrangement. In an angry and dominant tone such that I knew I wasn't going to be allowed to speak, she told me that unless I moved back to chambers by 11:00am that she would accept my resignation even though I had not requested to resign on that day. She then hung up the phone on me without allowing me to respond. I understood Judge Newman as saying that she was going to terminate me immediately unless I dropped my request for an alternative work arrangement under the court's Employment Dispute Resolution Plan (Plan) while the Chief was investigating my claims.
35. This was not the only recent time I was subjected to inappropriate workplace conduct in Judge Newman's chambers. I told Judge Newman that her [REDACTED] law clerk was repeatedly contacting me off-business hours in the middle of the night including at 3:00am asking for a wake-up call and 1:00am call asking me not to a final review of a draft opinion that was out on clerk-to-clerk review. Judge Newman attributed these inappropriate communications to people having different schedules and did nothing about it. After Judge Newman's refusal to take any action to stop the late night contacts, I reached out to the Director of Workplace Relations and the Chief Judge for assistance. I explained to them, as I did to Judge Newman, that the clerk could contact me by email at any time but that I needed her to refrain from texting and calling me in the middle of night for her personal and work-related requests. Despite my requests to stop, the clerk continued to contact me outside of regular working hours after bringing the matter to Judge Newman's attention.
36. I understood from the Director of Workplace Relations and the Chief Judge that my request for help would be confidential under the Plan. However, I am aware that after contacting the Director of Workplace Relations, Judge Newman emailed at least 95 people revealing all the details that I had disclosed in confidence, including my name as the complainant.
37. I would like to say that I love, revere, and admire Judge Newman personally and professionally for all her accomplishments and who she is as a person, which makes the last few months so much more difficult. The thing that causes me the greatest anguish is that Judge Newman has never acknowledged that she has acted inappropriately towards me and offered an apology. The past few months have been extremely stressful and have caused severe anxiety and emotional

distress brought on by Judge Newman's recent behavior towards me and refusal to communicate with me on any level.

I swear and affirm under penalty of perjury that the foregoing is true and correct.

/s/



Sworn to and subscribed before me this 25th day of April



/s/

Katie Hempill

District of Columbia

Signed and sworn to (or affirmed) before me on

25th Apr.

by

[Redacted]

Date

Number of individuals making statement

Katie Hempill

Signature of Notarial Officer

Office Administrator

Title of Office

Seal

My Commission Expires: 4/30/26

AFFIDAVIT OF [REDACTED] [Affidavit 2]

1. My name is [REDACTED] and I work in the Information Technology Office (ITO) of the United States Court of Appeals for the Federal Circuit. My current title is Acting HelpDesk Supervisor. I have been employed in ITO since 2007. My responsibilities currently include supervising the work of ITO helpdesk team members. The facts in this affidavit come from my own personal observations to the best of my recollection.
2. On April 17, 2023, the ITO helpdesk received a request from Judge Newman's paralegal, [REDACTED] about assisting Judge Newman. Another member of the ITO staff, [REDACTED] called Judge Newman at approximately 3:30pm that afternoon to see how we could assist her. [REDACTED] had the call on speaker.
3. Over the course of that call, I heard Judge Newman say to [REDACTED] that someone at the court was deleting her emails and I heard Judge Newman threaten that she was going to get her lawyers to investigate why her email was being "hacked." [REDACTED] offered to assist her to locate any missing files or emails. In our experience, Judge Newman frequently misplaces her files or emails by moving them to other folders and forgetting where she put them or inadvertently deleting them. She refused [REDACTED] offer to help her locate the missing material indicating that she believed the court was responsible. I would describe Judge Newman as ranting, rambling, and paranoid.
4. The following day, April 18, 2023, ITO received more phone calls from Judge Newman's chambers. At approximately 3:00pm, [REDACTED] received a call from Judge Newman's law clerk, [REDACTED]. [REDACTED] placed the call on speaker so that I could also listen. [REDACTED] asked why Judge Newman's phones were being forwarded to Judge Newman's paralegal, [REDACTED]. [REDACTED] told [REDACTED] that we would investigate the issue and the call ended. [REDACTED] and I then checked the Cisco Call Manager, which indicated that her phones were not being forwarded.
5. A few minutes later, I answered a call from [REDACTED] and Judge Newman. They said that the reason why Judge Newman had been unable to hear incoming calls was because the volume on her phone had been turned all the way down.
6. At that point, I thought it was best to double check that Judge Newman's phones were properly working. When I called Judge Newman's line, Judge Newman picked up the phone. I informed Judge Newman that we were calling to make sure her phone was working correctly and that she could hear the calls properly. I recall Judge Newman then asking why [REDACTED] was on her line. I informed Judge Newman that the system was always set up to allow her paralegal to

answer the phone and reminded her that this was the same with her prior judicial assistant. At that point, Judge Newman began to discuss her relationship with [REDACTED]. She said that [REDACTED] no longer wanted to work for her and that she was not taking it well. Judge Newman then said that she was going to have [REDACTED] “removed from the court” or “arrested.” Judge Newman seemed to be referring to the phone situation that day. Judge Newman then said that she was “going to make a big fuss” and planning to go to the Supreme Court and that you’ll hear more about this because it was going to be on the front page of the Washington Post. I assumed Judge Newman was discussing the ongoing investigation. Despite our assuring Judge Newman that the phones were working properly she again demanded that the court fix its phone system and insisted we “make it work.” For the most part during her rant, we remained silent to let her air her grievances which she expressed in a frustrated and very aggressive tone. The next morning, I went to Judge Newman’s chambers to check again and confirmed again that there were no issues with the phones.

7. On April 21, 2023, Judge Newman requested assistance because she was having trouble entering her PIN for her security key to log into her court-issued laptop. Judge Newman explained that she did not know why this was happening and claimed that she “turned it off overnight because it’s being hacked, as you know.” She seemed frustrated. I instructed Judge Newman to click “other user,” but she got nervous and asked: “who is the other user?” I tried to explain to Judge Newman that there was no other user and that this is a standard option as part of the operating system. She non-responsively said that there was a lot of other stuff going on and that “It’s all going to come out in a terrible uproar.” Once we were able to help Judge Newman get the text box to appear so she could enter her code, she had trouble entering her PIN in the text box. For about 5-10 minutes, I worked with Judge Newman to try and get the characters to populate but it would not work for her. I then instructed Judge Newman to restart the computer. While the computer was restarting, Judge Newman said: “What kind of mysterious stuff is going on?” Eventually, we were able to get her logged in. This process took 21 minutes. When other users have had similar problems, they can usually be resolved in a matter of minutes.
8. Over the last year, I’ve noticed in my interactions with Judge Newman what seems to be significant mental deterioration. Judge Newman routinely states that her computer is being “hacked” even though her concerns seem to be easily explained by Judge Newman forgetting what she was doing or not realizing that the network disconnected her based on inactivity. She seems agitated and paranoid, and we frequently have to calm her down in order to be able to help her with her problem.

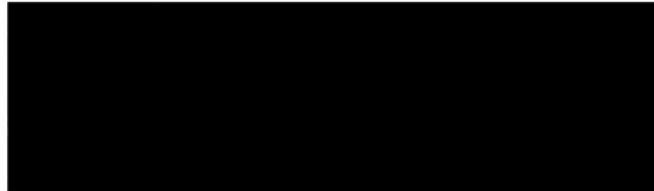
9. I would estimate that Judge Newman requests ITO's assistance significantly more than anyone else at the court. Judge Newman will call 1-2 times a week and now seems to be calling every day or other day for assistance. Many of these requests are the result of Judge Newman not being able to remember where she saved a file or email or Judge Newman forgetting the steps to remotely access into the court's computer network. These are things that Judge Newman has done for years, and these processes have not changed. She never used to have a problem with these routine tasks but now seems to repeatedly forget how to do them. We have to walk her through the same steps over and over and she does not seem to remember them from day to day. I believe last month alone we had to walk her through how to login in remotely 5-6 separate times. She has been working remotely since covid began and logging in remotely the same way throughout that period.

10. Judge Newman has also had significant difficulty grasping our instructions on our recent calls making it difficult to assist her. For instance, on the morning of April 14, 2023, we worked with Judge Newman on the phone for over an hour to again walk her through the steps to log-in remotely. Again, this is the same simple process she has used for years. A significant portion of time was spent helping Judge Newman just to get to the main desktop screen. Another large portion was spent getting her to see the pulse secure icon which was right on the top right portion of her screen. ITO would typically be able to help a user resolve this issue in less than five minutes, but Judge Newman was simply not comprehending the simple process for using the application that she used to have no problem handling on her own.

11. She also calls frequently about being unable to use her fax machine. The problems often involve user error. She forgets to load paper or simply needs to reboot the machine.

12. Having worked with Judge Newman for years, I have noticed significant deterioration in her memory, confusion, and ability to understand and execute simple tasks over the last year. Though it is difficult to say this, I believe Judge Newman is simply losing it mentally.

I swear and affirm under penalty of perjury that the foregoing is true and correct.



Sworn to and subscribed before me this 24th day of April, 2023
Washington, DC

/s/ Annette B Young



ANNETTE B. YOUNG
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires November 14, 2026

AFFIDAVIT OF [REDACTED] [Affidavit 3]

My name is [REDACTED]. I am the [REDACTED] Human Resources for the United States Court of Appeals for the Federal Circuit and have been employed by the court since January 3, 2007. I assisted Judge Newman with the hiring of several prior and current employees, including [REDACTED] to fill Judge Newman's paralegal/judicial assistant position. I also assisted Judge Newman with the paperwork and recruitment process for the judicial assistant position that was posted on the court's website on May 11, 2023, and for the reemployment of [REDACTED] on a temporary basis. The facts in this affidavit come from my own personal observations to the best of my recollection.

1. On April 24, 2023, I contacted Judge Newman after Chief Judge Moore approved Judge Newman's request to bring Judge Newman's previous judicial assistant, [REDACTED] on in a temporary role. I also notified Judge Newman that the Chief Judge agreed to seek approval of a waiver from the Director of the Administrative Office so that [REDACTED], as a re-employed annuitant, could receive both her annuity and an unreduced salary while she was working. I informed Judge Newman that I was happy and ready to assist with this process and asked Judge Newman if I could reach out to [REDACTED] to begin the rehiring and waiver process.

2. On April 27, 2023, I contacted Judge Newman shortly after the Chief Judge had emailed Judge Newman to approve Judge Newman's request to fill her open permanent judicial assistant/paralegal position. I emailed Judge Newman a draft vacancy announcement for the position and asked her to review it and let me know if she had any changes. I also indicated to Judge Newman in that email that I would post the announcement on the court's website, the JNet, and www.uscourts.gov once she had finalized it. I further asked Judge Newman to please let me know how she would prefer to receive the application packages for qualified applicants, reminding her that previously she had asked me to send them in batches on a weekly basis and noted that I would be happy to do the same this time if that was her preference.

3. It took a long time for Judge Newman to permit me to move forward on both the temporary rehire and permanent recruitment. I asked Judge Newman's approval to get started on the necessary paperwork to get a waiver for [REDACTED] at least four times. It was not until May 10, 2023, that she finally approved the vacancy announcement as well as giving approval to bring [REDACTED] on in a temporary role as a re-employed annuitant. I had over 20 email and phone call exchanges with Judge Newman over this time trying to get her approval. This was a more difficult process than my experiences helping other judges with their recruitments and unlike my prior dealings with Judge Newman because of the length of time it took and because I had to answer the same questions repeatedly and then wait for answers on those same issues to move forward.

4. Judge Newman seemed to have a particularly difficult time grasping the fact that the Chief Judge had agreed to seek approval of an offset waiver so that ██████ could receive her retirement annuity and collect an unreduced salary. I informed Judge Newman of this by phone and by email on April 24, 2023. However, at 7:35pm on May 1, 2023, Judge Newman sent me an email stating that it would be “inappropriate to ask a retired federal employee, who offers interim assistance out of loyalty to me, to yield her federal pension in exchange for an uncertain few weeks or days of work.” The next day, May 2, 2023, at 9:58am, I sent an email reminding Judge Newman that the Chief Judge agreed to seek approval to waive the salary offset and, if approved, ██████ “would receive her full pension and salary for hours worked here at the court.” I again reiterated that “I am happy and ready to assist with [the] waiver request process.” At 10:32am, Judge Newman responded by saying “To be clear: Are you saying she would receive no additional pay for working at the court?” At 10:40am, I sent Judge Newman another email again repeating that ██████ “would receive her full annuity (pension payment), as well as pay for hours worked at the court.” Despite my repeatedly assurances, Judge Newman continued to express concern in her response at 11:04am, stating “What would she be paid for her work at the court? What formalities would be applied to her pension status?” I responded a few minutes later at 11:18am again trying to assure Judge Newman that, if the waiver were approved, ██████ would be paid at the same grade and step that she previously held and that “[t]here would be absolutely no effect on her pension.” Judge Newman sent a response that night at 9:35pm saying “To be clear: will her annuity payment continue undiminished and automatically, paid by regular deposit or whatever system is now in place for her annuity? Then will she be separately paid for the days worked during each pay period, as certified by me?” I emailed Judge Newman again the next morning at 9:12am to reiterate that “Yes, if approved by the Director, her annuity payments will continue uninterrupted” and she would also receive separate earnings by direct deposit. A copy of these emails is attached.

5. I also encountered several issues trying to get Judge Newman to finalize a vacancy announcement for the permanent position. On April 27, 2023, I sent Judge Newman a draft vacancy announcement and informed her that I would post the announcement once she approved. Three days later, April 30, 2023, Judge Newman sent me an email asking for the vacancy announcement that was used for the recruitment that resulted in her prior hire of ██████. I emailed Judge Newman a copy of that prior announcement on May 1, 2023. The following day, May 2, 2023, at 1:27pm, Judge Newman sent me an email with a link to a posting from the Administrative Office’s website for a judicial assistant position at the District of Columbia Circuit Court of Appeals and asked that I use that description for her position. However, the link she sent to the announcement did not work and the announcement was no longer available. I emailed Judge Newman back at 2:04pm, to let her know the link was broken and that I could not access the posting. I also asked

Judge Newman to confirm that she would like to hire a judicial assistant rather than a paralegal and provided a draft of an updated vacancy announcement with the appropriate duties and requirements for a judicial assistant and asked her to review the announcement. I did not hear back from Judge Newman on this until May 9, 2023, when she sent me an email saying that she "had been awaiting word that Judge Moore has approved the hiring of a permanent JA on posting of that opening" and that if she "missed receipt of notice of such approval, please resend." I responded by reminding Judge Newman (and including the prior email) that the Chief Judge had approved the recruitment on April 27, 2023. Judge Newman seemed to be confused about whether she could fill the position or just post the ad. After the Chief Judge had to again explain to her that she could fill the position, Judge Newman approved the posting on May 10, 2023. I attached a copy of these emails.

I swear and affirm under penalty of perjury that the foregoing is true and correct.

[Redacted Signature]

Sworn to and subscribed before me this 23rd day of May, 2023

1st Katie Kempell

District of Columbia

Signed and sworn to (or affirmed) before me on 5/23/23 by [Redacted]
Date Name(s) of Individual(s) making statement

Katie Kempell
Signature of Notarial Officer
Office Administrator
Title of Office

My Commission Expires: 4/30/2026



From: [REDACTED]
To: [Judge Pauline Newman](#)
Subject: RE: contract services
Date: Wednesday, May 3, 2023 9:12:33 AM

Judge Newman,

Yes, if approved by the Director, her annuity payments will continue uninterrupted and will continue to be paid by regular deposit by OPM. Her benefits would all remain through OPM. In addition to her pension annuity payment, she will also receive separate earnings by direct deposit for whatever hours she works on the bi weekly basis as your JA. She will be paid on the normal, established pay dates like all other court/judiciary employees. When she receives her first check will be a matter of exactly when in the pay period she starts her employment.

[REDACTED] would not be entitled to travel reimbursement.

I hope this helps, let me know if you have any additional questions.

[REDACTED]

From: Judge Pauline Newman [REDACTED]
Sent: Tuesday, May 2, 2023 9:35 PM
To: [REDACTED]
Subject: Re: contract services

Many thanks, [REDACTED]

To be clear: will her annuity payment continue undiminished and automatically, paid by regular deposit or whatever system is now in place for her annuity?

Then will she be separately paid for the days worked during each pay period, as certified by me?

How long thereafter before she is paid? Will she receive a separate check? Is she entitled to travel reimbursement?

Anything else we should know ?

PN

Sent from my iPhone

On May 2, 2023, at 11:18 AM, [REDACTED] wrote:

Judge Newman,

She would be paid at the same grade/step that she held when she was

actively employed in your chambers (JSP 11/9). If the waiver is approved, she would continue to receive her pension at the amount currently received and at the same monthly interval. There would be absolutely no effect on her pension. She can work on an intermittent basis, however, HR will need to be notified by chambers each week of the hours worked as we will have to submit these to the AO in a timely manner so that she can be paid.

The AO-70, which is the form submitted to the Director of the AO in order to seek exemption from the salary off-set. I have completed the form with as much information as possible without additional details from you (start date) and [REDACTED] (her Civil Service Annuitant number). Once I have the missing information, I will need your signature and Chief Judge Moore's signature. I will then send it to the AO for approval by the Director. Once that is granted I will notify you and we can officially bring [REDACTED] back on.

[REDACTED]
Human Resources
U.S. Court of Appeals for the Federal Circuit
[REDACTED]

From: Judge Pauline Newman [REDACTED]
Sent: Tuesday, May 2, 2023 11:04 AM
To: [REDACTED]
Subject: Re: contract services

What would she be paid for her work at the court? What formalities would be applied to her pension status?

The arrangement should be that i would ask her to work as the need arises, and she would be paid for days worked. I would like to see the paperwork implementing this arrangement, including the pay rate.

Such paperwork should assure that her pension is unaffected.

Sent from my iPhone

On May 2, 2023, at 10:40 AM, [REDACTED]
wrote:

Judge Newman,

She would receive her full annuity (pension payment), as well as pay for hours worked at the court. So that I can begin completing the form for the waiver, I will need to know the following:

1. Full-time or part-time
2. Approximately how many hours per week
3. Effective date of return

Thank you,



Human Resources

U.S. Court of Appeals for the Federal Circuit

From: Judge Pauline Newman [redacted]
Sent: Tuesday, May 2, 2023 10:32 AM
To: [redacted]
Subject: Re: contract services

Thank you, [redacted] To be clear: Are you saying she would receive no additional pay for working at the court?
PN

Sent from my iPhone

On May 2, 2023, at 9:58 AM, [redacted] wrote:

Judge Newman,

When I wrote to you on April 24th regarding [redacted] possible return, I notified you that Chief Judge Moore has agreed to seek approval from the Director of the

AO to waive the salary off-set that [REDACTED] would face as a re-employed annuitant. This means that she would receive her full pension and salary for hours worked here at the court. The Administrative Office allows for courts to seek approval for an exemption to this regulation under certain exceptional circumstances. I am happy and ready to assist with waiver request process.

[REDACTED]

Human Resources

U.S. Court of Appeals for the Federal Circuit

[REDACTED]

From: Judge Pauline Newman

[REDACTED]

Sent: Monday, May 1, 2023 7:35 PM

To: [REDACTED]

Cc: All Judges [REDACTED]

Subject: Re: contract services

[REDACTED]

Concerning interim secretarial assistance, does the court have a contract agency that conforms to the rules that you describe? It is inappropriate to ask a retired federal employee, who offers interim assistance out of loyalty to me, to yield her federal pension in exchange for an uncertain few weeks or days of work.

The court's administration is required to provide the judges with essential services. As you recall, I asked you several weeks ago to post this position. You did not do so, and you only later informed me that you were prohibited from doing so. The present delay ensued.

The withdrawal of clerical services requires immediate remedy, along with restoration of my position as an active judge of the court. The court today issued the July appeal hearing calendar and excluded me from a fourth successive month of hearings. I require immediate revision.

Judge Newman

Sent from my iPhone

On May 1, 2023, at 3:24 PM, [REDACTED]
[REDACTED] wrote:

Judge Newman,

Please find attached the vacancy announcement from your 2021 Paralegal recruitment.

With regard to [REDACTED], AO procurement regulations only allow for us to bring her on as a contractor if she is working with a temporary staffing agency and we contract with the agency for her services. Otherwise, contracting with [REDACTED] directly would be considered a personal services contract. Personal service contracts are explicitly prohibited by the AO, with two exceptions: IT contractors funded through JITF, and narrowly and clearly defined "experts". The AO policy on personal services contracts can be found in the Guide to Judiciary Policy here: <https://jnet.ao.dcn/policy-guidance/guide-judiciary-policy/volume-14-procurement/ch-5-special-categories-procurements#510>.

If [REDACTED] is working with a temporary staffing agency, please let me know and I can work with our procurement team on next steps. Otherwise, we have to appoint her as a court paid employee.

[REDACTED] Human
Resources
U.S. Court of Appeals for the Federal Circuit
[REDACTED]

From: Judge Pauline Newman
[REDACTED]

Sent: Sunday, April 30, 2023 6:35 PM

To: [REDACTED]

Subject: Re: Paralegal Recruitment

[REDACTED], please send me a copy of the prior announcement that was used for my position

For [REDACTED], she is not to be a reemployed annuitant, but a contract employee whose work days will be as she and I agree.

Sent from my iPhone

On Apr 27, 2023, at 10:25 AM,

[REDACTED]
wrote:

Judge Newman,

In light of Chief Judge Moore's email this morning, I am sending along the draft of the vacancy announcement for your chambers paralegal. Please review the announcement and let me know if you have any

changes. Once the announcement is finalized, I will post it to the court website, the JNet, and to USCourts.gov. Please let me know how you prefer to receive the application packages for qualified applicants. I believe that when we worked together on your last recruitment I would pull them together into a PDF packet and send them up in batches about once a week. I am happy to do the same this time, if you like.

Additionally, please let me know if I may reach out to [REDACTED] regarding her temporary return. Because she will be coming back to the court as a re-employed annuitant (retiree), there is a little more involved with processing her appointment and I would like to begin the process so that we can get the salary exception to the AO for approval by the Director as soon as possible. I am on leave beginning at 1:30 this afternoon and will be out tomorrow as well.

Thank you,

[REDACTED]
Human Resources
U.S. Court of Appeals for the
Federal Circuit
[REDACTED]

From: [REDACTED]
To: [Judge Pauline Newman](#)
Subject: RE: Paralegal Recruitment
Date: Monday, May 1, 2023 3:24:00 PM
Attachments: [Job Announcement - Paralegal to a Federal Judge \(Newman\).pdf](#)

Judge Newman,

Please find attached the vacancy announcement from your 2021 Paralegal recruitment.

With regard to [REDACTED], AO procurement regulations only allow for us to bring her on as a contractor if she is working with a temporary staffing agency and we contract with the agency for her services. Otherwise, contracting with [REDACTED] directly would be considered a personal services contract. Personal service contracts are explicitly prohibited by the AO, with two exceptions: IT contractors funded through JITF, and narrowly and clearly defined "experts". The AO policy on personal services contracts can be found in the Guide to Judiciary Policy here: <https://jnet.ao.dcn/policy-guidance/guide-judiciary-policy/volume-14-procurement/ch-5-special-categories-procurements#510>.

If [REDACTED] is working with a temporary staffing agency, please let me know and I can work with our procurement team on next steps. Otherwise, we have to appoint her as a court paid employee.

[REDACTED]
[REDACTED] Human Resources
U.S. Court of Appeals for the Federal Circuit
[REDACTED]

From: Judge Pauline Newman [REDACTED]
Sent: Sunday, April 30, 2023 6:35 PM
To: [REDACTED]
Subject: Re: Paralegal Recruitment

[REDACTED], please send me a copy of the prior announcement that was used for my position

For [REDACTED], she is not to be a reemployed annuitant, but a contract employee whose work days will be as she and I agree.

Sent from my iPhone

On Apr 27, 2023, at 10:25 AM, [REDACTED] wrote

Judge Newman,

In light of Chief Judge Moore's email this morning, I am sending along the draft of the vacancy announcement for your chambers paralegal. Please review the announcement and let me know if you have any changes. Once the announcement is finalized, I will post it to the court website, the JNet, and to USCourts.gov. Please let me know how you prefer to receive the application packages for qualified applicants. I believe that when we worked together on your last recruitment I would pull them together into a PDF packet and send them up in batches about once a week. I am happy to do the same this time, if you like.

Additionally, please let me know if I may reach out to [REDACTED] regarding her temporary return. Because she will be coming back to the court as a re-employed annuitant (retiree), there is a little more involved with processing her appointment and I would like to begin the process so that we can get the salary exception to the AO for approval by the Director as soon as possible. I am on leave beginning at 1:30 this afternoon and will be out tomorrow as well.

Thank you,

[REDACTED]

Human Resources

U.S. Court of Appeals for the Federal Circuit

[REDACTED]

From: [REDACTED]
To: [Judge Pauline Newman](#)
Subject: RE: Position description
Date: Tuesday, May 2, 2023 2:04:00 PM
Attachments: [Job Announcement - JA to a Federal Judge \(Newman 2023\).doc](#)

Judge Newman,

Just to be sure that I clearly understand, you want to recruitment to be for a Judicial Assistant and NOT a paralegal, is that correct? The link you provided below is not working and I do not see the announcement on the DCCA website, so I have attached an updated announcement that includes the language we typically use on JA announcements. Please let me take a look at it and let me know if you have changes. Once I hear back I will post it.

[REDACTED]
[REDACTED] Human Resources
U.S. Court of Appeals for the Federal Circuit
[REDACTED]

From: Judge Pauline Newman [REDACTED]
Sent: Tuesday, May 2, 2023 1:27 PM
To: [REDACTED]
Cc: Judge Pauline Newman [REDACTED]
Subject: Position description

[REDACTED] Please use the attached position description, from the AO site illustrating the DC Court of Appeals, along with the other information concerning the materials to be submitted, address, etc. Please let me know when it is posted.

PN

Court Name/Organization:	District of Columbia Circuit Court of Appeals
Overview of the Position:	The Judicial Assistant provides administrative, case-related, and management support to a federal circuit judge and is responsible for all day-to-day operations of the judge's chambers. The Judicial Assistant exemplifies and fosters a positive approach of professionalism, teamwork, mutual respect, and dedication to public service. The Judicial Assistant is also an ambassador for and representative of the chambers in all interactions with court personnel, other judges' chambers, and the public. The ideal candidate for this position is detail-oriented, possesses strong organizational, administrative, and management skills, enjoys working in a challenging and collaborative environment on a wide variety of tasks, is a

	creative thinker and problem-solver, maintains a calm demeanor under pressure, and upholds the highest level of confidentiality. The position will not be available sooner than July 2023.
Location:	Washington, DC
Opening and Closing Dates:	03/01/2023 - Open Until Filled
Appointment Type:	Permanent
Classification Level/Grade:	Grade 5 - Grade 11
Salary:	\$42,870 - \$102,166
Announcement Number:	USCA-23-05

[LINK TO JOB ANNOUNCEMENT](#)

[REDACTED]

From: [REDACTED]
Sent: Tuesday, May 9, 2023 2:38 PM
To: Judge Pauline Newman
Cc: Chief Judge Kimberly A. Moore
Subject: RE: HR question
Attachments: Support services; Paralegal Recruitment

Hi Judge Newman,

The Chief gave approval to recruit for the permanent refill of your JA/paralegal position on April 27th. Please see the email attached from the Chief at 9:43AM on that date where she states that "HR will begin the process of posting for a replacement." Shortly after the Chief's email, I followed-up with an email sent directly to you on the same date at 10:23 AM (also attached) letting you know that in light of the Chief's approval I was sending along a draft vacancy announcement for your review/approval and that once the announcement was finalized I would post it publicly.

After the two emails attached and referenced above, you and I exchanged several emails regarding the announcement (highlighted below). The last email in this exchange is an email I sent to you on May 2nd, in which I attached a draft announcement for a JA rather than a paralegal and asked that you review and approve so that I could move forward and post it.

[REDACTED]
[REDACTED] Human Resources
U.S. Court of Appeals for the Federal Circuit
[REDACTED]

From: Judge Pauline Newman [REDACTED]
Sent: Tuesday, May 9, 2023 1:42 PM
To: [REDACTED]
Cc: Chief Judge Kimberly A. Moore [REDACTED]
Subject: Re: HR question

Thank you, [REDACTED]. I have been awaiting word that Judge Moore has approved the hiring of a permanent JA on posting of that opening. If I missed receipt of notice of such approval, please resend.

PN

Sent from my iPhone

On May 9, 2023, at 1:10 PM, [REDACTED] wrote:

Chief Judge Moore,

I have been in communication with Judge Newman regarding both the temporary rehire of [REDACTED] and the recruitment for a permanent fill of the JA/paralegal position in her chambers for several weeks. I am currently at a standstill with both [REDACTED] rehire and the recruitment, as I am awaiting responses/approvals from Judge Newman.

Specifically, I am waiting for Judge Newman to confirm specific details of [REDACTED] return and provide approval for me to begin the process of seeking a salary offset waiver from the AO. My last email to Judge Newman regarding [REDACTED] was on May 3rd and I have not yet received a response from her. [REDACTED] called me yesterday with HR questions specific to returning to the court as a rehired annuitant and I am expecting a follow-up email from her. I am also waiting for Judge Newman to approve the draft JA vacancy announcement for her chambers position. My last email to her regarding this matter was on May 2nd and I have not yet received a response from her.

Below is timeline of my communication with Judge Newman regarding both matters. Communications in blue primarily relate to [REDACTED] rehire and items in red primarily relate to the recruitment for a permanent fill.

Monday, April 24, 2023

1. 2:20 PM: Telephone call with Judge Newman to discuss the temporary rehire of [REDACTED] which you approved for a period of up to 90 days, with the possibility of an extension. I also notified her of your approval to seek a waiver of the salary offset that rehired annuitants are subject to, so that [REDACTED] could potentially receive her OPM annuity as well as a full salary for time worked for the court. Judge Newman denied my request to reach out to [REDACTED] to begin the rehire process and stated that I was not to contact [REDACTED] until the recruitment process begins for a permanent replacement for her JA/paralegal vacancy.
2. 4:09 PM: I sent a follow-up e-mail to Judge Newman shortly after our call to restate the approval to temporarily rehire [REDACTED] and to again offer to reach out to [REDACTED].
3. 4:53 PM: Judge Newman responded by email indicating that she requires a permanent as well as temporary solution to her judicial needs. No response to my inquiry about contact [REDACTED].

Tuesday, April 25, 2023

1. 2:49 PM: I responded to Judge Newman's last email and again asked if I could begin the process of bringing back [REDACTED] to assist her in chambers.
2. 3:53 PM: Judge Newman responded by asking me to assure her that the permanent JA recruitment will be listed promptly.

Wednesday, April 26, 2023

1. 3:24 PM: I responded to Judge Newman and explained that I was not in the position to guarantee the posting of the permanent position due to the judicial council vote prohibiting her from hiring any permanent staff and again asked for permission to move forward with [REDACTED].
2. 3:55 PM: Judge Newman responded stating that the court has an obligation to provide her "statutory judicial services" and that she understands my email to mean that the judicial council continues to refuse to allow her JA position to be filled.

Thursday, April 27, 2023

1. 10:25 AM: As a follow-up to the email that you sent to Judge Newman at 9:43 AM, which authorized the recruitment for a permanent replacement for [REDACTED], I sent an email to Judge Newman containing a draft vacancy announcement for a chambers paralegal. I indicated that I would get the announcement posted as soon as she approved it. I also asked if I could reach out to [REDACTED] to begin the process of her temporary rehire.

Sunday, April 30, 2023

2. 6:35 PM: Judge Newman responded to my email asking for a copy of the vacancy announcement that was used for the recruitment for her chambers paralegal in 2021. Judge Newman also stated that she did not want [REDACTED] to return as a re-employed annuitant but rather as a contractor.

Monday, May 1, 2023

1. 3:25 PM: I sent Judge Newman a copy of the 2021 paralegal vacancy announcement, as requested. My email also explained the AO procurement regulations related to contract employees and provided links to the regulations. I explained that the only way for [REDACTED] to return as a contractor would be through a temporary staffing agency contracted by the court.
2. 7:35 PM: Judge Newman emailed with a question about contracting agencies. She also expressed concern regarding [REDACTED] facing a salary offset as a reemployed annuitant and provided comments regarding the delay in recruiting for her permanent position and the oral argument paneling for July.

Tuesday, May 2, 2023

3. 9:58 AM: I responded to Judge Newman reminding her that on April 24th, I notified her that you agreed to seek approval from the Director of the AO to waive the salary offset for [REDACTED]. I clearly explained again that the waiver would allow [REDACTED] to receive her full pension AND salary for hours worked at the court. I stated that I was "happy and ready to assist with the waiver request process."
4. 10:32 AM: Judge Newman emailed "To be clear: Are you saying she would receive no additional pay for working at the court?"
5. 10:40 AM: I wrote to Judge Newman explaining again that [REDACTED] would receive her full annuity (pension payment), as well as pay for hours worked. I asked the judge to provide the following information so that I could complete the waiver request form: 1) whether [REDACTED] would be full-time or part-time; 2) approximately how many hours per week [REDACTED] will work; and 3) the effective date of [REDACTED] return.
6. 11:04 AM: Judge Newman wrote to ask if [REDACTED] would be paid for her work at the court and what would happen to her pension. She indicated that she wants [REDACTED] to work "as the need arises" and that [REDACTED] is to be paid for days worked. She also requested to see the waiver form.
7. 11:18 AM: I responded to Judge Newman with pay rate details, restated that there would be no effect on her pension, and indicated that [REDACTED] could work on an intermittent basis. I explained the process for reporting [REDACTED] hours to HR. I also provided a draft of the waiver form, detailed the additional information that I needed Judge Newman to provide, and provided next steps.
8. 1:27 PM: Judge Newman sent an email requesting that I use a linked vacancy announcement for a JA from the DC Court of Appeals for her recruitment. The link did not work and the announcement was no longer on the DC Court of Appeals site.

9. 2:05 PM: I emailed Judge Newman to let her know that the link was broken. I asked her to confirm that she would like to hire a JA rather than a chambers paralegal. I provided a draft of an updated vacancy announcement with the appropriate duties and requirements for a JA and asked her to review for posting.

10. 9:35 PM: Judge Newman responded inquiring again whether [REDACTED] pension annuity would be affected and whether she would be separately paid for time worked at the court. Judge Newman asked about how [REDACTED] would be paid for hours worked at the court, whether [REDACTED] would be eligible for travel reimbursement, and if there was any additional information the judge needed to know.

Wednesday, May 3, 2023

1. 9:13 AM: I responded to Judge Newman with assurance that, if approved by the AO, [REDACTED] annuity payments will continue uninterrupted and that in addition to her annuity she will also receive a separate payment for her earnings for whatever hours she works for the judge. I further explained the method and timing of payments and notified Judge Newman that [REDACTED] is not eligible for travel reimbursement.

Monday, May 8, 2023

2. 4:22 PM: I spoke with [REDACTED] by phone, returning a voice mail that she left for me at 3:30 PM. [REDACTED] had a number of questions regarding the effect on her pay and benefits of returning as a rehired annuitant. I provided answers to the questions I was able to and promised to follow-up with answers to those questions that required more research. [REDACTED] stated that she would prefer to have all of the answers in writing and said that she would send me an email with all of her questions.

Please let me know if you have any questions.

Thanks,

[REDACTED]

Human Resources

U.S. Court of Appeals for the Federal Circuit

[REDACTED]

From: Chief Judge Kimberly A. Moore [REDACTED]

Sent: Tuesday, May 9, 2023 10:21 AM

To: [REDACTED]

Subject: HR question

[REDACTED]

Can you please check in with Judge Newman because weeks ago her requests for judicial assistance were approved? Why hasn't this moved forward? As I understand it:

April 19: [REDACTED] resigned from Judge Newman's chambers on April 19, 2023 and asked that there be no further communication between him and Judge Newman. He was assigned to our Clerk's Office where he now works.

Judge Newman requested that she be permitted to bring back her former judicial assistant, [REDACTED] who her chambers claimed was ready and willing to come back. As I understand it, you contacted the AO to determine how to bring back [REDACTED] (a retired annuitant) in a manner which would not diminish her retirement annuity. I agreed to petition the AO to waive the salary set-off that [REDACTED] would face as a reemployed annuitant. This way [REDACTED] would receive her full retirement annuity and get paid for any hours she worked at the court.

April 24: I understand you to have communicated the approval to bring [REDACTED] back to Judge Newman on April 24 including the fact that [REDACTED] will be brought back in a manner which allows her to keep both her full retirement annuity and get paid.

April 27 (9:43 am): I sent Judge Newman an email (copying you) which approved her request to advertise to hire a permanent paralegal/assistant.

Given that her request for temporary assistance was approved 16 days ago (just 5 days after her assistant resigned) and that her request to advertise for a permanent replacement was approved 13 days ago, I am confused about her below claims that either I or the court continue to deprive her of what she refers to as secretarial services.

Can you update me on this process and reach out again to Judge Newman?

With gratitude,

Kimberly Moore

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

From: [REDACTED]
Sent: Monday, May 8, 2023 5:21 PM
To: Chief Judge Kimberly A. Moore [REDACTED]
Subject: Fwd: Governance and Education Travel Report (fka Non-Case Related Travel Report) Report Due May 15

Chief,

See PN's response below.

[REDACTED]

From: Judge Pauline Newman [REDACTED]
Sent: Monday, May 8, 2023 5:11 PM
To: [REDACTED]

Cc: Judge Pauline Newman [REDACTED]
Subject: Re: Governance and Education Travel Report (fka Non-Case Related Travel Report) Report Due May 15

[REDACTED] I do not choose to do secretarial work, whether or not any senior judges are obliged to do so. My JA routinely keeps these records and fills out these forms for my review. It appears that the court chooses to continue to deprive me of routine services.

PN

Sent from my iPhone

On May 8, 2023, at 4:23 PM, [REDACTED] wrote:

Judge Newman,

Almost all the senior judges enter this information in Infoweb themselves and many of them do not have secretarial support. This is a mandatory report required by all judges; only you have your information about your travel. You will need your credentials for [Infoweb](#), and here are the [instructions](#) on how to enter the data. It is a very user-friendly system. Perhaps one of your law clerks could assist you. If your staff has any questions, I'd be happy to answer them.

Best,

[REDACTED]
Chambers of Chief Judge Kimberly A. Moore
U.S. Court of Appeals for the Federal Circuit
717 Madison Place NW
Washington, DC 20439

From: Judge Pauline Newman [REDACTED]
Sent: Monday, May 8, 2023 3:40 PM
To: [REDACTED]
Subject: Re: Governance and Education Travel Report (fka Non-Case Related Travel Report) Report Due May 15

[REDACTED] since I don't at present have a JA, by action of the Chief Judge, please advise how the court proposes to assist in handling these reporting requirements.

PN

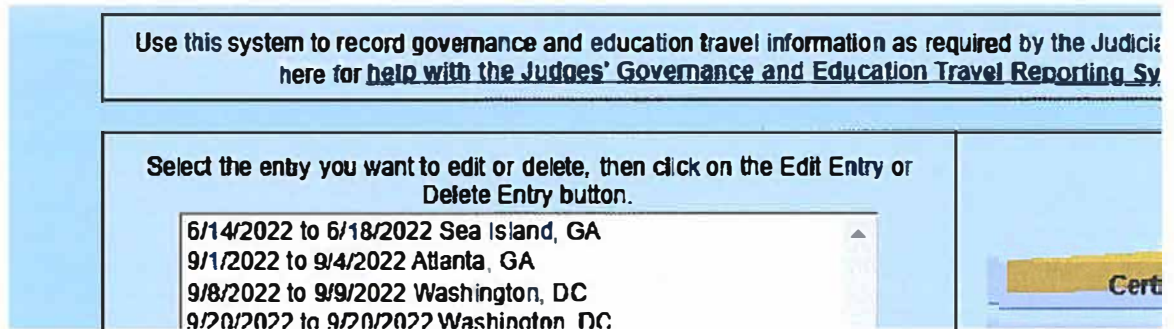
Sent from my iPhone

On May 8, 2023, at 3:09 PM, [REDACTED] wrote:

Good afternoon,

This email is a friendly reminder that the Governance and Education Travel Report (fka Non-Case Related Travel Report) is due **May 15**. This report must be completed even if your judge didn't do any relevant traveling in 2022, which is known as a negative report.

I've reviewed the entries and noticed that some hadn't clicked the **Certify Travel** button. So please be sure to do so by May 15.



Also, if your judge attended our Judicial Conference, it is a reportable item, according to [The Guide to Judiciary Policy](#). Please see the rule below and refer to your judge. Please let me know if you need me to decertify you to make any changes.

§ 270.30 Examples of Governance and Education Travel

1. (a) Governance and Education Travel That **Must Be Reported** (unless the judge is reimbursed in any way for the expenses), includes:

1. (1) Travel related to court governance. For example, travel to:

1. (A) meetings of the Judicial Conference and its committees;
2. (B) circuit judicial conferences or meetings planned by the circuit courts;
3. (C) meetings of circuit judicial councils or their committees;
4. (D) meetings of the circuit courts or their committees;
5. (E) meetings of the district courts or their committees;
6. (F) meetings of bankruptcy judges or bankruptcy judges' committees;
7. (G) meetings held at, sponsored, or organized by the judicial branch.

2. (2) Travel to attend educational seminars or programs sponsored by government agencies, universities, and law schools. For example:

1. (A) educational seminars or programs sponsored by government agencies, universities, and law schools or other sponsors;
2. (B) meetings sponsored by bar associations or professional societies;
3. (C) participation in moot courts or to lecture or present at conferences;
4. (D) attendance at sentencing institutes or to visit prisons.

3. (3) Travel made under the auspices of or at the request of the federal government. For example, travel to programs sponsored by:

- the Department of Justice,
- the Department of State,
- the Library of Congress, or
- any other agency of the federal government.

4. (4) Any other travel undertaken in the discharge of the duties of the judge identified with a particular case or cases assigned to the judge.

I will be on travel next week with the court. So if you need me, please email or text me at [REDACTED] and I will get back to you as soon as possible.

Thanks,

[REDACTED]
Chambers of Chief Judge Kimberly A. Moore
U.S. Court of Appeals for the Federal Circuit
717 Madison Place NW
Washington, DC 20439
[REDACTED]

United States Court of Appeals for the Federal Circuit

In re Complaint No. FC-23-90015

* * *

AFFIDAVIT [Affidavit 4]

I, [REDACTED] do hereby swear under oath that the following is true to the best of my knowledge.

1. From the period of December 26, 2016, through May 30, 2023, I served as the appointed chief deputy clerk for the U.S. Court of Appeals for the Federal Circuit. On May 31, 2023, I was designated as acting clerk of court for the U.S. Court of Appeals.
2. As then senior deputy clerk at all times relevant to this affidavit, the circuit clerk has designated me as responsible for directing and managing the activities of the Clerk's Office. Additionally, during the periods relevant to this affidavit, I was concurrently designated by the Federal Circuit Judicial Council to serve as acting circuit executive and clerk of court whenever the circuit executive/clerk of court was out of the office.
3. Between April 20, 2023, and May 17, 2023, I participated in multiple email exchanges with or about Judge Newman. True and accurate copies of these exchanges are attached in full as Exhibits A, B, C, D, E, F. Following these email communications, I contemporaneously forwarded these exchanges to the Special Committee, as well as discussed these matters with the Special Committee.

4. During these exchanges, Judge Newman levied various accusations against me including (1) multiple assertions that I was both acting as counsel for Chief Judge Moore and as her “adversary,” (3) repeated assertions that I was withholding secretarial services from her, (4) multiple allegations about the “illicit removal” of equipment from her chambers, (5) multiple allegations of removal of chambers records, and (6) the making of false statements to both her and her legal counsel.
5. These email exchanges were troubling to me for several reasons. First, it appeared to me that from one email to the next Judge Newman either did not read or did not recall the lengthy prior explanations I provided to her. Second, Judge Newman demonstrated an adversarial approach toward me even after I explained my lack of involvement with aspects of her complaints to me. Third, in an effort to still provide Judge Newman with clarification, I found it necessary to take a firm tone of a nature I have never had to take in my six years of working with Judge Newman at the court. Finally, the hostile nature of Judge Newman’s personal accusations against me stands in sharp contrast to how I have interacted with any of the other 50-or-so federal judges with whom I have worked both in the Federal Circuit and in other federal courts since I began working in the federal judiciary in 2004.
6. From these perseverated accusations against me by Judge Newman, I experienced emotional stress and discomfort, including loss of sleep and

heightened anxiety upon receipt of an email message from her and then attempting to craft a suitable response to her. In addition to my own encounters with Judge Newman, I also provided support and encouragement to other members of court staff who were experiencing similar difficult interactions with Judge Newman. As part of my conversations with members of court staff and the difficulties they were experiencing with her, I requested that staff attempt to engage in conversations with Judge Newman only by email or to bring a second person along if required to go to her chambers.

Judge Newman Chambers Staff

7. On April 20, 2023, I transmitted to Judge Newman and her chambers staff a memorandum from her former paralegal, [REDACTED]. The memorandum included, among other things, details about the location of her chambers files.
8. In response to my email, Judge Newman requested assistance with an opinion she anticipated having ready for processing for release. I advised her of the email address for processing opinions in the Clerk's Office, to which she clarified that she needed assistance with incorporating hard copy edits into her draft opinion and wanted to know "how do [I] envision providing these services on a regular basis." Exhibit A.
9. I explained to Judge Newman that the Clerk's Office could assist with getting her edits by fax but that her law clerks were the only staff with

access to the electronic version and would need to incorporate her edits for final review. Judge Newman responded that this was “secretarial work, not law clerk work.” Exhibit A.

10. Following a second accusation of withholding secretarial services on April 24, 2023, I explained that the service Judge Newman was requesting from me and the Clerk’s Office “would result in the providing of expanded services and support beyond my existing authority” to provide services to any of the other judges of the court. Exhibit B.
11. Notwithstanding my explanation on April 24, 2023 and my third attempt on May 17, 2023, Judge Newman persisted in alleging I “deprived [her] of secretarial services” another time on May 17, 2023. Exhibit D.
12. On April 25, 2023, I spoke by telephone with Judge Newman’s counsel, Greg Dolin, to coordinate electronic service and filing of documents with the court. On the call, Mr. Dolin inquired what could be done to restore services to Judge Newman. I clarified for him on the phone, and again in a follow-up email shortly thereafter, that “Judge Newman has continued and continues to have full access to her chambers materials and the ability to transmit opinions to the Clerk’s Office for issuance” and that I had already clarified this fact with Judge Newman that morning. Exhibit E.
13. Judge Newman replied all to my email to her counsel on April 26, 2023, and accused me of having “withheld from my counsel the information that

you refused to permit filling the paralegal/secretarial position in my chambers, unlike all the other judges.” Exhibit E.

14. I replied all to Judge Newman and her counsel on April 27 recounting the same details I had previously explained to her by email, including my request that she address her staffing concerns with either the Chief Judge or the Judicial Council, not me.
15. For the benefit of her counsel, I explained in the detail the services Judge Newman was being provided by the Clerk’s Office and the efforts I had taken in response to Judge Newman’s concerns. I also clarified for her and her counsel that I had already clarified these points for Judge Newman by email on April 25, 2023.
16. At no point was I involved in any decision concerning the departure of staff from Judge Newman’s chambers. Likewise, during the period at issue, I had no authority to direct the staffing decisions as to Judge Newman’s chambers or any other chambers of the court.

Case Management of the Judicial Complaint

17. On April 21, 2023, the Clerk’s Office received three hand-delivered letters from Mark Chenoweth of the New Civil Liberties Alliance. The letters were addressed to Chief Judge Moore and handed to me by a member of the Clerk’s Office staff upon delivery, upon which I transmitted the letters to the Special Committee.

18. Because the letters did not include either an entry of appearance by counsel or any notation reflecting that Judge Newman was aware of the entry of appearance on her behalf, I emailed Judge Newman on April 22, 2023, for clarification at the direction of the Special Committee. Exhibit B.
19. In response to my email on April 24, 2023, Judge Newman confirmed who was serving as her counsel and then asked me to “please confirm that you are serving as counsel to Judge Moore.” I clarified that I was “not serving as legal counsel to Judge Moore” but rather was serving as “acting clerk” in the absence of the then-clerk. Exhibit B.
20. Without explanation, Judge Newman replied the same day that “it seems clear that you are acting as counsel for Judge Moore, and as adversary to me, a member of the court. Otherwise, why haven’t you assisted me in your role as Clerk? I need secretarial services, that you continue to withhold.” Exhibit B.
21. I responded that her request for additional support was previously addressed by Chief Judge Moore and clarified that she is receiving the same level of service being provided to every other judge. To underscore my point and need to maintain my neutrality in this matter, I “respectfully ask[ed] that [she] direct any additional concerns about the Clerk’s Office’s role and authority to the Chief Judge and/or Judicial Council.” Exhibit B.

22. The next day, Judge Newman wrote back that she “note[d] [my] response on behalf of Judge Moore” and wanted to know my authorization. I declined to respond.
23. Contrary to Judge Newman’s allegation of responding on behalf of Chief Judge Moore, I did not confer with Chief Judge Moore before replying to Judge Newman on April 24, 2023.
24. Due to the sensitive nature of this matter, I continue to serve as the case manager in this case and have coordinated an agreement with Judge Newman’s counsel for them to send electronic filings to the court through me and for me to serve them electronically with filings from the court.

Judge Newman Equipment and File Access

25. On April 24, 2023, Judge Newman emailed me with the subject line “Where is our computer?” and alleging I directed its removal from her chambers. She also asked for my authority to take “my chambers’ equipment.” Exhibit C.
26. Because I did not know what Judge Newman was talking about, I asked for clarification, which she said was the computer at her secretary’s station. I replied that I did not direct such removal and that I would contact our IT staff to address the matter.
27. The next day I sent a lengthy email to Judge Newman apologizing for the confusion about staff movement and the equipment in her chambers. I noted that I directed IT staff to replace the computer in her chambers that

day and that “nothing about the move of this desktop ever hindered, restricted, or interfered with access by either you or your chambers staff to her chambers records” because all records were located on her chambers network file.

28. I further clarified for her that it was “longstanding court policy” that computers are assigned to individuals and not to a specific office and that the assigned computer relocates with the person when they move locations or offices. In other words, court staff followed existing court policy, contrary to Judge Newman’s assertions.
29. Additionally, I confirmed for Judge Newman that her former staff member, [REDACTED] had his access to her chambers records upon his transfer the prior week.
30. On May 15, 2023, Judge Newman emailed Chief Judge Moore and copied all judges requesting the “immediate return of my JA-desk computer, for it contains important records.” Judge Newman again repeated the allegation that the computer was an “illicit removal.” Exhibit D. Because of my prior communications with Judge Newman on this point, Chief Judge Moore forwarded me the exchange and asked me to respond.
31. On May 16, 2023, I responded to Judge Newman as my fourth attempt to address her access to her chambers records. In addition to my repetition of the same facts to her, I added that both I and a member of the IT staff personally inspected [REDACTED]’s desktop and confirmed that he had “no

remaining documents or records from his time in your chambers or records that belong to you.” Exhibit D.

32. In another attempt to help her explain court policy on the relocation of court desktops, I explained to Judge Newman that when her prior assistant left her chambers, that desktop was removed and all files were transferred to her network drive. A new desktop was issued to her chambers when [REDACTED] started two years prior.
33. Again, I noted that “[f]rom my extensive and repeated review of this situation . . . it appears that our staff have again followed this standard policy without exception or differential treatment to you.” I also expressed my objection to Judge Newman’s characterization of the conduct by staff. Exhibit D.
34. Judge Newman replied shortly thereafter and asked me to send someone to her chambers when she arrived to help “find the material that was stored in the computer at the JA desk.” Exhibit D.
35. Later that afternoon, Judge Newman called my office to speak with me. As I was out of the office for the afternoon, someone in my office gave me the message and I asked [REDACTED] in IT to go to chambers to assist Judge Newman locate her files.
36. Around 2:44 p.m., [REDACTED] sent me a message that he had no success with Judge Newman. I called him to discuss what happened. On the call [REDACTED] was audibly upset and bothered and he said it was due to

how Judge Newman behaved and treated him when he was attempting to help her locate her files. I asked [REDACTED] to send me an email summary of what happened, which he did by 3:17 p.m. Exhibit F. Of note, [REDACTED] reported that Judge Newman expressed that "[REDACTED] [sic] stole all of her files. I have no JA. I want my PC and Phone back. No one from my chambers or myself will do the job of an [sic] JA" and Judge Newman wanted the Clerk's Office to assist her.

37. Because of [REDACTED] experience and Judge Newman's request for Clerk's Office assistance, the next morning I emailed Judge Newman my fifth attempt to explain the circumstances of the computer and her chambers records. Taking a more assertive tone than in my past messages, I criticized Judge Newman for being "agitated, belligerent, and demonstratively angry" with [REDACTED] and for her again levying accusations about staff denying her access to her chambers records. In hopes of resolving the matter with Judge Newman, I even offered to allow either her or her staff to personally inspect Mr. [REDACTED]'s desktop. I concluded my message by asking Judge Newman and her staff to take a more respectful approach toward any future staff that attempt to assist in chambers. Exhibit D.
38. Again missing the three points of my prior communications that (1) there were no chambers records on any desktop, (2) [REDACTED] did not retain access to or possess any of Judge Newman's records, and (3) Judge

Newman and her staff have always had access to the chambers network files, Judge Newman responded that “everything on my chambers computer is the property of my chambers. It does not belong to a departed employee.” Exhibit D.

39. Judge Newman ended her May 17 email to me by noting that [REDACTED] “proposed to teach [her] how to perform secretarial operations on my computer, now that you have deprived me of secretarial services. I declined.” Exhibit D. From my prior May 16 phone call with [REDACTED], I understood that the “secretarial operations” he was attempting to teach her was how to open her Financial Disclosure file so she could prepare her annual filing.

40. Because Judge Newman’s May 17 response continued to disregard my several prior attempts to explain things to her, I declined to respond.

DATED this 31st day of May, 2023.

[REDACTED]

Sworn to and subscribed before me this 31st day of May, 2023.

[Signature]
Notary Public





[REDACTED]

From: Judge Pauline Newman
Sent: Friday, April 21, 2023 10:39
To: [REDACTED]
Subject: Re: Chambers 801 Transition Memo 4.20.23

That is secretarial work, not law clerk work. My law clerks are performing other as assignments.

Sent from my iPhone

On Apr 21, 2023, at 10:04 AM, [REDACTED] wrote:

My apologies as I misunderstood your request.

Is there anyone in chambers today who can receive your edits by fax? If not, one of us can get it and scan it to them. Since your law clerks have access to the electronic file, they would incorporate your edits for your final review. We can then work with one of your law clerks on the transmittal once the edits are incorporated into the electronic version.

Regards,

[REDACTED]



[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED] | www.ca9c.uscourts.gov

From: Judge Pauline Newman [REDACTED]
Sent: Friday, April 21, 2023 9:54
To: [REDACTED]
Subject: Re: Chambers 801 Transition Memo 4.20.23

It will be in hard copy with my edits, and I will need to see if in its final form.
Also, I am working from home today.
How do you envision providing these services on a regular basis?

Sent from my iPhone

On Apr 21, 2023, at 8:50 AM, [REDACTED] wrote:

Judge Newman,

You can email it to [REDACTED] and we will upload it into the system for processing.

Regards,
[REDACTED]

<image001.png>

[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED] | www.ca9c.uscourts.gov

From: Judge Pauline Newman [REDACTED]
Sent: Friday, April 21, 2023 0:36
To: [REDACTED]
Subject: Re: Chambers 801 Transition Memo 4.20.23

[REDACTED] I expect to have a completed draft of an opinion tomorrow. Who should I send it to, to process for release?
PN

Sent from my iPhone

On Apr 20, 2023, at 4:18 PM, [REDACTED]
[REDACTED] wrote:

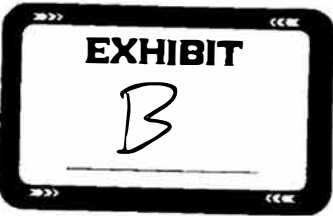
Good afternoon,

Per Chief Judge Moore's April 19, 2023 email, I am transmitting the Chambers 801 Transition Memo that [REDACTED] prepared and submitted to me as final a few minutes ago.

Regards,
[REDACTED]

[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED] | www.ca9c.uscourts.gov



From: Judge Pauline Newman
Sent: Tuesday, April 25, 2023 0:10
To: [REDACTED]
Subject: Re: Clarification of Counsel Submission

[REDACTED], I note your response on behalf of Judge Moore. What is your authorization?
Judge Newman

Sent from my iPhone

On Apr 24, 2023, at 10:39 AM, [REDACTED] wrote:

Judge Newman,

If they are appearing as your counsel, we need them to enter an appearance in the matter per court rules so they can appear, be served on your behalf, and participate in the pending disability and misconduct matter as outlined in those rules.

Concerning your request for additional support, Chief Judge Moore addressed your request by email last week. The Clerk's Office remains available to provide the service I originally offered to you—assistance with transmitting to the Clerk's Office a final opinion for docketing and issuance—that we provide to all the judges of this court. To be clear, I am not seeking to act adverse to you and remain available to provide any of the existing services and support the Clerk's Office provides to any of the court's judges per our statutory and regulatory authority. However, because your requested service from the Clerk's Office would result in the providing of expanded services and support beyond my existing authority, I cannot do so without the approval and direction of the Chief Judge or Judicial Council.

As such, and so that I can continue to remain neutral in fulfilling my administrative and ministerial duties to you and the other judges of the court, I would respectfully ask that you direct any additional concerns about the Clerk's Office's role and authority to the Chief Judge and/or Judicial Council.

Regards,
[REDACTED]



[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED] | www.ca9c.uscourts.gov

From: Judge Pauline Newman [REDACTED]
Sent: Monday, April 24, 2023 10:04
To: [REDACTED]
Subject: Re: Clarification of Counsel Submission

[REDACTED] there is no litigation; what is the "entry of appearance?"
In addition, it seems clear you are acting as counsel for Judge Moore, and as adversary to me, a member of the court. Otherwise, why haven't you assisted me, in your role as Clerk? I need secretarial services, that you continue to withhold.
PN

Sent from my iPhone

On Apr 24, 2023, at 7:28 AM, [REDACTED] wrote:

Judge Newman,

Thank you for confirming this for me. I will reach out to your counsel this morning about the entry of appearance paperwork.

To clarify, though, I am not serving as legal counsel to Judge Moore. My capacity here is as acting clerk in light of [REDACTED]'s absence.

Regards,
[REDACTED]

<image001.png> [REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit
[REDACTED] | www.ca9c.uscourts.gov

From: Judge Pauline Newman [REDACTED]
Sent: Monday, April 24, 2023 1:26
To: [REDACTED]
Subject: Re: Clarification of Counsel Submission

To [REDACTED]
Responding to your question, the New Civil Liberties Alliance is serving as my counsel, as stated in the letter from its President and General Counsel Mark Chenowith, to Judge Moore.

Please confirm that you are serving as counsel to Judge Moore.

Pauline Newman

Sent from my iPhone

On Apr 22, 2023, at 3:29 PM, [REDACTED]
[REDACTED] wrote:

Judge Newman,

On Friday, the special committee received a letter from Mark Chenoweth of the New Civil Liberties Alliance in which he states he is your counsel and filing the letter on your behalf. The letter was neither accompanied by an entry of appearance nor included a copy line on the letter indicating that you were aware of such a filing.

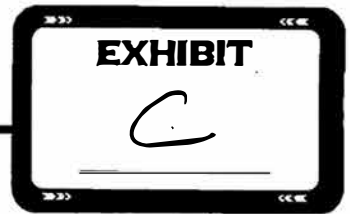
Because of the sensitive and confidential nature of this inquiry, the committee asked me to clarify with you whether Mr. Chenoweth is appearing as your counsel in this matter before anything is sent to him. If Mr. Chenoweth is your counsel, I will reach out to him on Monday morning to coordinate without delay his entry of appearance and motion to appear pro hac vice on your behalf.

Regards,

<image001.png>

[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED] | www.ca9.uscourts.gov



[REDACTED]

From: Judge Pauline Newman
Sent: Tuesday, April 25, 2023 11:42
To: [REDACTED]
Subject: Re: Where is our computer?

Follow Up Flag: Follow up
Flag Status: Completed

The disruption to my chambers, the loss of my time, is irremediable. And inexcusable.
Judge Newman

Sent from my iPhone

On Apr 25, 2023, at 10:52 AM, [REDACTED] wrote:

Judge Newman,

I was only speaking about the JA desktop. If there is something missing or wrong with your desktop, I will have someone from IT work with you on locating. We have not made any adjustments to your individual desktop. If you need us to provide you with an updated caption or opinion template, let me know and we will send it promptly.

As I understand it, the decision to relocate [REDACTED] out of chambers came from Judge Moore, per her email to you last week, as part of an ongoing employment dispute matter, of which I am not a party or participant. The subsequent movement of the desktop was standard procedure and not specific to this situation. Now that you have clarified that the device was not replaced, I have spoken with our IT staff and they will be replacing it today with the same access and setup that [REDACTED] had. Because the removed device did not have your chambers records on it as those items are stored on your chambers network drive, at no point did you or your chambers staff lose access to those materials.

Having read the transition memorandum from [REDACTED] sent to you and your chambers, he explained in there where on your network drive he saved various items. Likewise, he has remained available—through a request to me—to assist anyone in your chambers with locating any items you need.

I hope this further clarifies this situation for you.

Respectfully,
[REDACTED]



[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

www.cafc.uscourts.gov

From: Judge Pauline Newman [REDACTED]
Sent: Tuesday, April 25, 2023 10:31
To: [REDACTED]
Subject: Re: Where is our computer?

Thank you, [REDACTED] I point out some inaccuracies in your recitation. Yesterday we sought to provide an official caption and some historical material that was not available on my desktop. Also, please explain the authority by which this equipment was removed. The disruption to my chambers, the loss of my valuable time, awaits explanation.
Judge Newman

Sent from my iPhone

On Apr 25, 2023, at 9:46 AM, [REDACTED] wrote:

Judge Newman,

My apologies for the confusion here about the staff movements and equipment. I spoke with IT staff this morning and a computer will be returned to the JA desk in your chambers, which will have full access to your chambers network drive and all of the same materials previously available to your JA and the rest of your chambers staff. Because all of your chambers materials, drafts, and documents are stored on your chambers network drive and not the local desktop, nothing about the move of this desktop ever hindered, restricted, or interfered with access by either you or your chambers staff to these materials.

Under longstanding court policy, computers are assigned to individuals when they start at the court and not to a specific office. When that person moves offices, the computer moves with the person. This is what happened last week when [REDACTED] relocated to the fourth floor. I spoke with [REDACTED] this morning and confirmed that during his time in your chambers he never saved any chambers information on the desktop but always saved everything—your chambers memos, drafts, forms, etc.—on to your chambers network drive. Moreover, I confirmed with IT that [REDACTED]'s access to any of your chambers files was removed upon his transfer last week.

In [REDACTED]'s transition memo that I forwarded to you and your chambers staff last week, [REDACTED] explained where he kept all drafts and materials in your chambers network drive. If you would like him to show you or anyone else in your chambers where items are saved, please let me know. Our IT staff can also assist you with locating these items.

I hope this clarifies this matter for you. Please let me know if I can be of additional assistance in remedying this matter.

Respectfully,

[REDACTED]

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[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED] www.cafc.uscourts.gov

From: Judge Pauline Newman [REDACTED]
Sent: Monday, April 24, 2023 23:19
To: [REDACTED]
Subject: Re: Where is our computer?

[REDACTED]
In your position as (acting) clerk of court, please ascertain who instructed the removal of my chambers equipment.

Judge Newman

Sent from my iPhone

On Apr 24, 2023, at 5:59 PM, [REDACTED]
[REDACTED] wrote:

Judge Newman,

I did not direct that removal and will contact IT to fix the matter.

[REDACTED]

[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED] www.cafc.uscourts.gov

From: Judge Pauline Newman [REDACTED]
Sent: Monday, April 24, 2023 5:03:00 PM

To: [REDACTED]
Subject: RE: Where is our computer?

The computer at the JA/Secretary's station.

From: [REDACTED]
Sent: Monday, April 24, 2023 4:25 PM
To: Judge Pauline Newman [REDACTED]
Subject: RE: Where is our computer?

Judge Newman,

Respectfully, I have no idea what you are talking about as I never gave such an order. What computer is missing?

[REDACTED]

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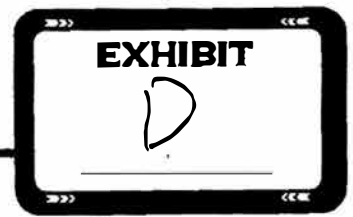
[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED] www.ca9.uscourts.gov

From: Judge Pauline Newman [REDACTED]
Sent: Monday, April 24, 2023 16:15
To: [REDACTED]
Subject: Where is our computer?

[REDACTED]
My office computer is not here; I understand it was removed at your instructions. Please restore it immediately – I need the drafts, forms, and information present on that machine. Please also explain your authority to take my chambers' equipment.

Judge Newman



[REDACTED]

From: Judge Pauline Newman
Sent: Wednesday, May 17, 2023 9:13
To: [REDACTED]
Subject: Re: Please return my computer

[REDACTED] everything on my chambers computer is the property of my chambers. It does not belong to a departed employee.

As for [REDACTED]'s visit yesterday, he proposed to teach me how to perform secretarial operations on my computer, now that you have deprived me of secretarial services. I declined.
Judge Newman.

Sent from my iPhone

On May 17, 2023, at 8:51 AM, [REDACTED] wrote:

Judge Newman,

Yesterday, I provided a fourth attempt to explain the circumstances of the computer for at your judicial assistant's desk and that there are no records of yours on [REDACTED]'s computer. Today is my fifth attempt.

In response to my email yesterday, you asked for someone to come to your chambers when you got in to show you how to locate the files that you needed. Shortly after you called my office to say you were in, I asked [REDACTED]—head of our help desk and someone who has provided technical support to you for many years—to go to your chambers. [REDACTED] brought along [REDACTED] from our IT staff to also assist. Because no one in the Clerk's Office has the ability to access your chambers network files, only a member of our IT staff or your chambers staff can actually assist with locating them.

Shortly after leaving your chambers, [REDACTED] called me to report the following. He shared that you were looking for the files to complete your annual financial disclosure and to access your travel documents, which are stored on your chambers Y drive. [REDACTED] has assisted with locating these files for you annually for the past few years and assured me he knew where they were. When he attempted to assist you yesterday, you became agitated, belligerent, and demonstratively angry with him. In short, you refused to let him help you. Because you did not want him touching your computer, he offered to show your law clerks where to find those files and to set up the access to those files on the desktop at your judicial assistant's desk. You again refused. I understand you also said that this was work that the Clerk's Office should be doing, accused your former employee [REDACTED] of stealing your files, and you alleged that a PC and a phone were also stolen from you. He left your office out of concern that he would further upset you. To say that

██████████ was shaken up on the phone when recounting his interaction with you and your conduct toward him would be an understatement.

Having refused our assistance, you again levy accusations that we are denying you access to your chambers information. Because my four prior exchanges have not sufficiently explained this matter to you, I can ask our IT staff to provide ██████████ ██████████'s desktop to you for examination by either you or your staff to confirm what I have already communicated to you.

Alternatively, and notwithstanding how you treated him yesterday, ██████████ is more than willing to come back to your chambers and help you find these files. If he or any other member of court staff does return, I respectfully request that they be treated with appropriate dignity and respect by you and any member of your chambers.

Please let me know how you would like to proceed.

Regards,



██████████
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

██████████ | www.ca9c.uscourts.gov

From: Judge Pauline Newman ██████████
Sent: Tuesday, May 16, 2023 21:51
To: ██████████
Cc: Chief Judge Kimberly A. Moore ██████████
Subject: Re: Please return my computer

██████████ i am now told that the computer that was on my assistant's desk, is now with ██████████. I require return of that computer and all the information it holds. If he needs a computer, it is not the one he took from my chambers and that holds my information.
Judge Newman

Sent from my iPhone

On May 16, 2023, at 8:55 AM, ██████████ wrote:

Judge Newman,

Let me know when you are in chambers and I will send someone up to assist.

<image001.png>

Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

www.ca9c.uscourts.gov

From: Judge Pauline Newman
Sent: Tuesday, May 16, 2023 8:44
To:
Cc: Chief Judge Kimberly A. Moore
Subject: Re: Please return my computer

I will be in chambers later this morning. Please send someone to find the material that was stored in the computer at the JA desk. This includes important records.
Judge Newman

Sent from my iPhone

On May 16, 2023, at 8:18 AM,
wrote:

Judge Newman,

Following receipt of Chief Judge Moore's below email yesterday afternoon, I personally inspected [REDACTED]'s desktop and found no remaining documents or records from his time in your chambers or records that belong to you. Additionally, I requested a member of ITO staff also inspect his desktop and the staff member confirmed, as I had, that there were no remaining documents or records of yours on his desktop. As part of this review, I also confirmed that [REDACTED] has no access to your network drive.

In reviewing my records, I have previously addressed this matter with you by email twice beginning on April 24 and continuing through April 25, wherein I explained that the desktops in every chambers are assigned to the individual and not the location. I confirmed that in this instance our IT staff followed long-standing policy and moved [REDACTED]'s desktop with him, and I confirmed with both [REDACTED] and IT then—and again today—that any documents concerning your chambers were saved to your chambers network drive at the time of his departure from your

chambers. [REDACTED]'s transition memo to you on April 20, 2023 explained the location of various item as well. For your reference, I am reattaching our two email exchanges from April 24-April 25 and the transition memo from April 20. Our IT staff remain available to assist you with locating any records you may need on your chambers network drive.

On April 27, 2023, we had a third email exchange concerning the issue of a desktop in your chambers, your ability to access files, and an explanation of how we handle desktops and file access when staff change desks. Your legal counsel were also copied on this exchange, and for your reference, I am also attaching a copy of that exchange for your awareness.

Finally, I will add to this conversation that when [REDACTED] left your chambers and upon [REDACTED]'s arrival two years ago, our IT staff removed her desktop from your chambers, confirmed that any files she had were stored on your network drive, and then issued [REDACTED] a new desktop which was in the same format as the desktop currently in your chambers. [REDACTED]'s assigned desktop was then wiped and prepared for issuance to a new staff member.

I understand that you may not have been aware of this policy, but it nonetheless is and has been our policy for all chambers and court staff for some time. From my extensive and repeated review of this situation here, it appears that our staff have again followed this standard policy without exception or differential treatment to you. Respectfully, your continued characterization that the removal of the desktop was "illicit" is contrary to years of court operational policy and practice—including the handling of equipment with prior departures from your chambers—and unfairly maligns the staff of this court.

I hope this clarifies this matter for you.

Regards,
[REDACTED]

[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED] | www.ca9c.uscourts.gov

From: Chief Judge Kimberly A. Moore [REDACTED]
Sent: Monday, May 15, 2023 15:05
To: [REDACTED]
Cc: Judge Pauline Newman [REDACTED]
Subject: FW: Please return my computer

[REDACTED]

I believe you have had several communications with Judge Newman over [REDACTED]'s computer. Can you please respond to her concerns expressed below?

Thank you,
Kimberly Moore

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

From: Judge Pauline Newman [REDACTED]
Sent: Monday, May 15, 2023 10:55 AM
To: Chief Judge Kimberly A. Moore [REDACTED]
Cc: All Judges [REDACTED]
Subject: Please return my computer

To Judge Moore:
Please instruct the immediate return of my JA-desk computer, for it contains important records. The computer that was eventually returned, after the illicit removal of this and other equipment from my chambers, is blank.
Judge Newman

E

From: [REDACTED]
Sent: Thursday, April 27, 2023 8:23
To: Judge Pauline Newman
Cc: Greg.Dolin@ncla.legal; mark.chenoweth@ncla.legal
Subject: RE: CONFIDENTIAL: Follow up

Judge Newman,

Respectfully, I have not withheld any information from your counsel and stand by what I stated in the below email. As I previously explained to you by email on April 24, 2023, your concerns about staffing for your chambers need to be addressed to the Judicial Council and not me. I was not involved in the decision concerning the removal of staff from your chambers or the question of whether to fill the vacancy. Your request for expansion of services by the Clerk's Office—namely direct secretarial support and assistance with editing and preparing opinions—is outside of the scope of our authority or services we provide to any other judge of this court. Accordingly, I promptly referred your request to Chief Judge Moore, who responded to you the same day. Absent a contrary direction from either the Chief Judge or the Judicial Council, I cannot proceed and so again, I request that you direct your concerns to them.

The Clerk's Office remains available to provide the same services to you that we provide to any other chambers, which we have done so since the beginning of this matter. Specifically, we have continued to provide you with IT support and assistance; full access to existing communication and network systems; and the processing of judicial directions from you and your chambers, including promptly issuing an opinion on your behalf earlier this week. Once you alerted me to the issue of a removed desktop from your chambers, I attempted to clarify for you what happened; explained that the movement of the desktop from your chambers was standard policy when a staff member changes desks; explained that even with the movement of the desktop there was no chambers information on the device as all of your chambers records were saved to and available on your private chambers network drive; and directed the prompt restoration of a desktop to your chambers, which has since happened. I explained this all to you over several email exchanges ending on April 25, 2023.

You have my consent to share our several email exchanges with your counsel.

Regards,
[REDACTED]



[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED] | www.ca9c.uscourts.gov

From: Judge Pauline Newman [REDACTED]
Sent: Wednesday, April 26, 2023 17:40

To: [REDACTED]
Cc: Greg.Dolin@ncla.legal; mark.chenoweth@ncla.legal
Subject: Re: CONFIDENTIAL: Follow up

[REDACTED] you have withheld from my counsel the information that you refused to permit filling the paralegal/secretarial position in my chambers, unlike all the other judges. My judicial activity is highly prejudiced.

Judge Newman

Sent from my iPhone

On Apr 25, 2023, at 10:52 AM, [REDACTED] wrote:

Mr. Dolin,

Thank you for speaking with me by phone moments ago.

Appearance and Admission. Since my earlier message to Judge Newman, the Judicial Council has waived the need for formal entry of appearance. Because you clarified that you are now lead counsel on this matter and a member of the Federal Circuit bar, this is moot anyway. We do not require any separate filing on this point.

Service and Filing. In order to expedite the receipt by you and the Judicial Council of all matters and avoid the need for paper delivery and service, we agreed to the following process.

1. If needed, any future filings with the judicial council on this matter can be emailed to me at this address. Please send anything in PDF format encrypted using the same password we agreed to by telephone.
2. I will serve any orders and items from the judicial council or the special committee to you, Mr. Chenoweth, and Judge Newman by email in the same format, again using the same password.

Copy of Current Orders. I will transmit by email to you today all orders already entered in this matter. The files will be encrypted with the same password.

Access to Court Resources. While on the phone, you asked for clarification on Judge Newman's ability to access her chambers materials and issue opinions. I clarified that Judge Newman has continued and continues to have full access to her chambers materials and the ability to transmit opinions to the Clerk's Office for issuance. I noted that I separately clarified this issue for Judge Newman by email earlier today. The Clerk's Office remains available to provide the same technical

assistance and support for Judge Newman that we currently provide to all of the other judges of the court.

Please let me know if I can clarify anything else. My direct dial and mobile number are below as well if you need to reach me.

Regards,



[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED] | www.ca9c.uscourts.gov



[REDACTED]

From: [REDACTED]
Sent: Tuesday, May 16, 2023 15:18
To: [REDACTED]
Subject: RE: Judge Newman's behavior

Thanks, [REDACTED]. I'll let you know if she changes her mind.

[REDACTED]



[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED] www.ca9c.uscourts.gov

From: [REDACTED]
Sent: Tuesday, May 16, 2023 15:17
To: [REDACTED]
Subject: Judge Newman's behavior

Hello [REDACTED],

[REDACTED] and I went up to Judge Newman at 2:35PM on 5/16/2023. I explained to Judge Newman that I was here to help with locating some files. She said the files for financial disclosures and travel documents were missing. I asked if I could show her the location of the files; she refused.

She said: [REDACTED] stole all of her files. I have no JA. I want my PC and Phone back. No one from my chambers or myself will do the job of an JA. She then requested assistance from the Clerk's Office.

Thank you,
[REDACTED]

AFFIDAVIT OF [REDACTED] [Affidavit 5]

1. My name is [REDACTED]. I have worked in the Information Technology Office (ITO) of the United States Court of Appeals for the Federal Circuit for 17 years. My current title is Acting IT Director. Before that role, I worked as the court's Helpdesk Manager. As the Helpdesk Manager, my responsibilities included taking calls and answering emails asking for IT assistance and supervising the work of the more junior ITO helpdesk team members. The facts in this affidavit come from my own personal observations to the best of my recollection.
2. In my time with the court, I have worked with Judge Newman on several occasions in assisting with IT issues. When I first started, I was amazed that someone in her 80s, like Judge Newman was at the time, could pick things up so quickly and easily. However, particularly over the last few years, I've noticed a significant increase in Judge Newman forgetting how to perform basic tasks that used to be routine for her. Judge Newman seems to contact the ITO helpdesk once or twice a week usually confused because she forgets how to remotely connect to the court's network or because she forgets where she stored a file or an email.
3. Judge Newman routinely blamed her inability to find a file or email on someone "hacking" her computer. I would describe her on these calls as sounding paranoid. However, when I would scan for malware and viruses, there would be nothing that would suggest any malicious interference with her computer, and I would usually be able to find the file she was looking for on a desktop folder or other location where she had forgot she saved it to. Rather than take responsibility for the errors, she would blame hackers or the computer.
4. It now takes at least double the time to help Judge Newman with an IT issue than it does an average court user because she often cannot recall routine steps or processes and we will need to walk her through the entire process and repeat the same steps over and over again. These are things like remoting into the system that used to be no problem for Judge Newman until more recently.
5. Judge Newman was also unable to complete an annual security awareness training two years ago. That training required a user to watch a short 10-20 minute video presentation and then answer a series of questions based on the information provided in the video. The test is multiple choice and asks the same questions when a user retests. I believe Judge Newman tried and failed multiple times to answer enough questions to pass the training, because she was unable to retain the information from the video she had just watched. I had to sit with her and help feed her answers to the questions in order for her to pass the training. I do not have any record of her taking it last year and she hasn't started this year.

6. The helpdesk members, and particularly the more junior members of our staff, have also reported to me that Judge Newman is often harsh, forceful and demanding in their interactions with her and often deflects blame from not being able to do something to either the computer or “hackers.”

I swear and affirm under penalty of perjury that the foregoing is true and correct.

/s/ [Redacted Signature] _____
[Redacted Name]

Sworn to and subscribed before me this 3rd day of May, 2023

[Redacted Signature]
Washington, DC

ANNETTE B. YOUNG
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires November 14, 2026



AFFIDAVIT OF [REDACTED] [Affidavit 6]

My name is [REDACTED]. I have worked in the Clerk's Office of the United States Court of Appeals for the Federal Circuit for seven years, and I have served as Court Services Coordinator since March 2021. Before that, I served as Legal Specialist and in other positions within the Clerk's Office. In these capacities, I have served as a courtroom deputy, and in my most recent position I have been responsible for coordinating courtroom and argument logistics. Among other tasks, I greet judges and make certain they have everything that they need for argument. I have interacted with Judge Newman routinely on a monthly basis. The facts in this affidavit come from my own personal observations to the best of my recollection.

1. When the court decided to postpone in-person oral arguments due to the COVID-19 pandemic, I helped prepare Judge Newman and all other judges for telephonic arguments. During this period, from March 2020 to August 2021, we frequently experienced delays connecting Judge Newman to the telephonic arguments. Judges provided both primary and backup phone number, but there were several instances when we were not able to reach Judge Newman at either number she provided. In those instances, we contacted the Information Technology Office, and after their support staff reached out to Judge Newman we were only then able to connect her for argument. These connection delays were significantly more common for Judge Newman than other judges and would occasionally delay the argument start time by several minutes, and in some cases more than ten minutes.

2. I also recall spending considerably more time preparing Judge Newman for the transition to telephonic and video arguments than any of the other judges. Of the three orientation sessions that I scheduled with Judge Newman and that I lead, each took around 45 minutes to an hour. For comparison, sessions with other judges averaged 15-20 minutes and were often conducted in a group of several judges. While judges frequently had questions, Judge Newman's questions would often be premature (i.e., questions that would have been answered in the normal course of the orientation) or occasionally repetitive. Many of the questions I would receive from other judges in these settings centered on how these new procedures would impact Judge Newman, and in at least two circumstances I scheduled orientations for other judges to assist specifically in preparing them for panels they served on with Judge Newman.

3. In one orientation session I held with Judge Newman about nine twelve months ago, which I expected would take no more than 15 to 20 minutes, the session lasted around one hour. The bulk of the time was not spent on the technical procedures, but instead on an unrelated issue involving our system-generated final calendar that I had not caught. I told Judge Newman that I would correct the calendar and explained to her how the issue arose. She was suspicious and confused

and struggled to comprehend how the error occurred. She seemed distrustful of my answers and repeatedly asked whether I needed to consult with others despite my assurances that I was aware of how the issue arose and that I would be the one responsible for taking care of correction. In my view, this conversation did not require more than five minutes, so I was surprised that it took at least 20 minutes before she seemed satisfied that the issue would be resolved.

4. In my capacity as a courtroom deputy, the last few times I have witnessed Judge Newman on the bench I have noticed that she does not ask as many questions as in the past. She has also not appeared as attentive about presiding and keeping advocates to their scheduled argument time as she was even just before the pandemic. I am aware that Judge Newman uses a real-time transcription service so she can follow what is said at oral argument, and I have wondered if this has contributed to her lack of active participation. Judge Newman has historically let lawyers go longer than their allotted time, but the last few times I have served as deputy while she presided Judge Newman did not seem to be cognizant of the time, and the lawyers continued to speak until they self-stopped. She no longer consistently cut them off or managed the time. She seemed content to let them continue for as long as they wanted.

5. In my interactions with Judge Newman, the incident that concerned me the most occurred about 12-18 months ago when I witnessed her being escorted by a Court Security Officer from the public elevator banks to the courtroom. I immediately thought this was unusual because Judge Newman and other judges always arrive at the antechambers to the courtrooms using the judges' elevators to avoid public interaction, and I had seen other judges using those elevators that day. I walked to the end of the hallway to greet Judge Newman. She seemed lost and confused, like she wasn't fully there. I walked with her down the hallway toward the courtroom antechamber. After we walked the short distance from the elevators to the antechamber, she needed to sit for more than a minute until she could gather the energy to stand so I could then escort her inside for robing.

I swear and affirm under penalty of perjury that the foregoing is true and correct.

/s/ [Redacted Signature]

Sworn to and subscribed before me this 9th day of May, 2023

District of Columbia

Signed and sworn to (or affirmed) before me on /s/ Katie Hempel
5/9/23 by [Redacted Name]
Date Name(s) of Individual(s) making statement

Katie Hempel
Signature of Notarial Officer

Office Administrator
Title of Office

My Commission Expires: 4/30/2026

Seal

2



AFFIDAVIT OF [REDACTED] [Affidavit 7]

1. My name is [REDACTED] and I work in the Information Technology Office (ITO) of the United States Court of Appeals for the Federal Circuit and have been so employed since February 28, 2022. My responsibilities include fielding requests made to the ITO helpdesk about computer issues in chambers. The facts in this affidavit come from my own personal observations to the best of my recollection.
2. On April 17, 2023, the ITO helpdesk received a request from Judge Newman's paralegal, [REDACTED] about assisting Judge Newman with setting up a conference call and separately helping Judge Newman with what was only described as trouble with her computer.
3. After helping set up the requested conference call, I called Judge Newman at approximately 3:30pm that day to assist with the request regarding her computer issues. I initiated the call on speaker because I wanted another member of ITO, [REDACTED] to hear what was going on in case I needed assistance.
4. When I asked Judge Newman about the problem that she was having, Judge Newman said that she believed that her computer was being monitored, hacked and reviewed. She also mentioned her phone in that same conversation, however, she did not specify if she meant her personal landline or court-issued iPhone or any specific issues or events regarding her phone. She sounded annoyed, agitated, paranoid, and upset.
5. I asked Judge Newman to further explain some of the behaviors the computer was exhibiting so I could further troubleshoot.
6. I believe Judge Newman responded that things were disappearing.
7. I asked Judge Newman to elaborate on the things that were disappearing.
8. Judge Newman told me she would not elaborate because she was under the impression that the court may have been responsible for messing with her computer. She also suggested at one point that the court was interfering with her mail at her residence. I would describe Judge Newman's response as nonsensical because there was no reason to believe any of that was happening. She seemed to be in attack mode and mentioned "litigation."
9. Sometime during the events described in Paragraph 8, [REDACTED] came over to assist me.

10. Judge Newman stopped directing her attention to our conversation about the computer request when she got a call from another line. Because Judge Newman was no longer talking with us, we decided to hang up the call.
11. At approximately noon the next day, April 18, 2023, Judge Newman called the helpdesk and informed us that she had forgotten her security key to access her computer. I worked with [REDACTED] and he created a second security key so she was able to log into her computer. [REDACTED] instructed me to instruct Judge Newman that when she was done working for the day to call the helpdesk and we would come to retrieve the key and lock it in a secure location.
12. At approximately 3:10pm that afternoon, I fielded a call from Judge Newman's [REDACTED] law clerk, [REDACTED], asking why Judge Newman's chambers phone line was being forwarded to [REDACTED]. I told [REDACTED] that we would investigate the issue.
13. [REDACTED] and I together looked at the Cisco Call Manager, which showed that both Judge Newman's direct line and her chambers line were not being forwarded.
14. I called [REDACTED] with my phone on speaker so [REDACTED] could also hear to inform her that the lines were not being forwarded to [REDACTED]. In a demanding tone, [REDACTED] said that we needed to get this fixed. I believe I told [REDACTED] that we would continue to investigate, and the call ended.
15. At that point, [REDACTED] and I called Judge Newman's personal line and [REDACTED] picked up the phone. [REDACTED] and I concluded that it was likely Judge Newman and [REDACTED] must not have realized that, like all paralegals and judicial assistants, [REDACTED] has access to both Judge Newman's personal extension and the chambers line to answer calls on her behalf. We thought it was likely that [REDACTED] had answered a call that Judge Newman was expecting and that there was some confusion and miscommunication because [REDACTED] phone and workstation were not presently located in her chambers. ITO had only been directed to move [REDACTED] IT equipment and were never informed that he was no longer a member of chambers. Given this limited information, we did not remove [REDACTED] access to either the chambers line or Judge Newman's personal extension.
16. I briefly left the office. When I returned, [REDACTED] told me that [REDACTED] had called again to let us know that she and Judge Newman had realized that the volume was turned all the way down on Judge Newman's phone, which is why Judge Newman was unaware that there were calls coming to her line.

17. At 3:28pm, I fielded a call from [REDACTED] who asked whether we had been conducting any testing on the phones and noted that he had received a few calls that would ring once and then hang up. He mentioned that the calls had been coming from Judge Newman's chambers and one call from [REDACTED] personal cell phone. I told him that we were not doing any testing.
18. [REDACTED] then decided that it would be best just to confirm that Judge Newman's personal line was properly working. I overheard [REDACTED] talking with [REDACTED] to let him know what we were doing and heard [REDACTED] ask [REDACTED] not to pick up the phone when we called.
19. [REDACTED] then proceeded to call Judge Newman's direct line. [REDACTED] again placed the call on speaker. After a few rings, Judge Newman picked up the phone. I heard [REDACTED] explain to Judge Newman that we were calling just to confirm that her phone was working properly. After briefly discussing the situation regarding the phones, Judge Newman started to talk about [REDACTED]. She stated that [REDACTED] does not want to sit in chambers anymore and that she was not taking it well. Judge Newman went on to say that [REDACTED] asked the Chief to move him and she said something along the lines of the Chief and her were in a big fight. Judge Newman stated that she would have [REDACTED] removed from the court or arrested. She did not explain the reason why she would want to do so but we assumed that it related to the prior calls about Judge Newman's phone lines being forwarded to [REDACTED]. Judge Newman then proceeded to say that she was going to make a big fuss and mentioned the Supreme Court as well as the Washington Post. I understood her to be talking about the ongoing investigation involving Judge Newman. She then demanded that we needed to fix the phone system and ended the call. I would describe the call as bizarre and unnecessarily hostile toward [REDACTED].
20. Upon the end of the call, I returned to my office with [REDACTED]. We drafted out notes detailing the day's events, which I sent in an email to [REDACTED] at 4:23pm that day reporting these events. I've attached a copy of that email to this affidavit.
21. Judge Newman did not call to have ITO pick up the security key. The following day [REDACTED] went to retrieve the key from chambers.

I swear and affirm under penalty of perjury that the foregoing is true and correct.

____/s/ [Redacted Signature]

Sworn to and subscribed before me this 20th day of April, 2023

____/s/ Katie Elfgill

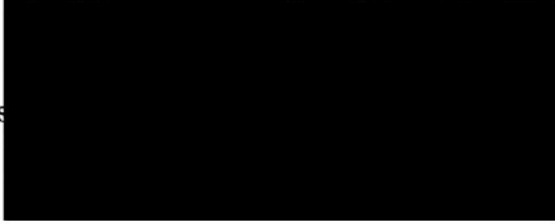


AFFIDAVIT OF [REDACTED] [Affidavit 8]

1. My name is [REDACTED] and I work in the Information Technology Office (ITO) of the United States Court of Appeals for the Federal Circuit as an Executive Assistant. On May 16, 2023, [REDACTED] asked me to accompany him to assist Judge Newman retrieve some electronic files. The facts in this affidavit come from my own personal observations to the best of my recollection.
2. We went up to Judge Newman's chambers around 2:30pm. My understanding is that Judge Newman needed assistance locating her financial disclosure files so that she could file her report. [REDACTED] told Judge Newman that he knew where the files were located on her shared network drive because he had helped her judicial assistants in the past with the same issue, but Judge Newman said there was no point and he was wasting her time because the files were not on her computer.
3. As [REDACTED] walked closer to the computer to try and show her where the files were Judge Newman yelled at [REDACTED] that he could not touch her computer and that she did not want him to access her computer. At one point, Judge Newman pointed to the workstation in front of her chambers and said that the computer there had been taken and demanded it be returned to her chambers. I recall Judge Newman saying around this point in the conversation that [REDACTED] took her files and that he was a thief. I understood that she was referring to [REDACTED]. Judge Newman was pacing back and forth and visibly angry and frustrated. [REDACTED] repeated he could help her locate the files on her drive.
4. [REDACTED] then offered to help one of her law clerks find the files so that she could file the financial disclosure report. Judge Newman said she needed them for other things and needed someone else to do what she said was clerical work.
5. Judge Newman's behavior did not make sense to me because it was my understanding that we went up to her chambers to help Judge Newman get files she could not locate and [REDACTED] was so certain that the files were on her shared computer drive, but she was refusing to let him help her. I found Judge Newman's behavior during this whole event to be very bizarre and confusing.

I swear and affirm under penalty of perjury that the foregoing is true and correct

/s/



Sworn to and subscribed before me this 19th day of May, 2023

/s/ Katie Hempell

District of Columbia

Signed and sworn to (or affirmed) before me on 5/19/23 by [Redacted]

Katie Hempell
Signature of Notarial Officer

Office Administrator
Title of Office

Seal

My Commission Expires: 4/30/2026



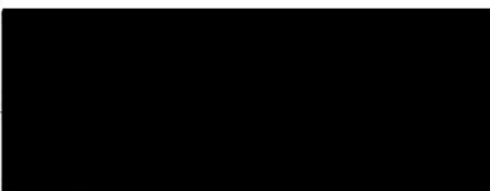
AFFIDAVIT OF [REDACTED] [Affidavit 9]

1. My name is [REDACTED] and I work as a law clerk to the Honorable Pauline Newman and have been so employed since November 21, 2022. The facts in this affidavit come from my own personal observations to the best of my recollection.
2. In early March 2023, Judge Newman disclosed to me and other members of chambers that [REDACTED]. Judge Newman's paralegal, [REDACTED] [REDACTED], confronted Judge Newman about the inappropriateness of such disclosures at the meeting. It is my understanding that [REDACTED] then informed the Chief Judge, who visited chambers the next day to speak with everyone, including Judge Newman, about the incident.
3. My experience as a clerk has changed dramatically since these events.
4. I was subsequently informed by Judge Newman and her [REDACTED] law clerk, [REDACTED] [REDACTED], to no longer include [REDACTED] on communications because he could not be trusted.
5. At some point thereafter (but before it was reported in the media and later confirmed by the court) it became known and discussed in chambers that Judge Newman was the subject of a formal investigation.
6. Judge Newman and the other chambers staff were informed that I was uncomfortable working on Judge Newman's defense in the investigation, which is personal to Judge Newman.
7. I also found it necessary to telework more frequently to remove myself from the drama, politics, and stress surrounding these events in chambers.
8. It was my understanding that other law clerks were assisting Judge Newman in her defense of these proceedings. On one occasion, I was asked to do research about Judge Newman's dissents. I was told that the research was in preparation for a speech by Judge Linn. I took a minor role at the beginning of the assignment. The assignment was taken over by [REDACTED]. Judge Newman later mentioned that the research would work well as part of her defense.
9. I also became aware of a workplace dispute between [REDACTED] and [REDACTED] when Judge Newman forwarded emails about that dispute to all judges and all law clerks at the court.

10. On April 18, 2023, ██████████ requested that all of Judge Newman's law clerks attend an in-person meeting in chambers.
11. After I learned that the meeting would concern ██████████ but before the meeting started, I informed Judge Newman and the other clerks that I would like to be loaned out to another chambers and suggested that I should not be present at the meeting.
12. At that point, Judge Newman employed me to attend the meeting, communicating that my opinion was needed. I felt uncomfortable but attended the meeting anyway.
13. At that meeting, Judge Newman said that she was not happy that ██████████ had asked the Chief to place him outside of chambers. Judge Newman asked her law clerks if we could handle ██████████'s responsibilities without him. We all agreed that the clerks could handle those responsibilities.
14. At that point in the meeting, I informed Judge Newman that working in her chambers was hurting my ability to complete my work, taking a toll on my mental health, and harming my relationships at the court. I then reiterated that I would like to be loaned out to another judge. In response, Judge Newman indicated she would not let me work for another judge because the optics wouldn't look good for her given the current investigation. Judge Newman then told me that my options were to stay or resign.
15. At that point in the meeting, ██████████ interjected on my behalf in support of my request to be loaned out to another chambers and possibly even another court, but Judge Newman was not receptive to the idea.
16. I informed Judge Newman that I only had two pending cases assigned to me. She responded that I could assist her with research projects, but I told her that I took the position to be a law clerk and not a research assistant. I also reiterated that I would still feel uncomfortable given my proximity and potential exposure to matters concerning the investigation.
17. The next day, April 19, 2023, I brought my concerns to the Chief and indicated that I could no longer work in this environment and requested to be moved to another chambers.

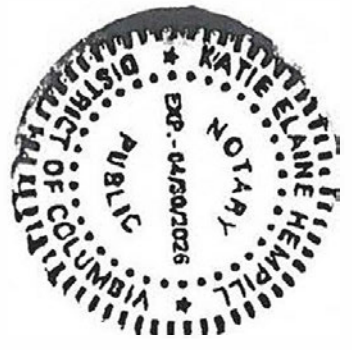
I swear and affirm under penalty of perjury that the foregoing is true and correct.

____/s/



Sworn to and subscribed before me this 19 day of April, 2022

____/s/ Katie E. Kempill



AFFIDAVIT OF [REDACTED] [Affidavit 10]

My name is [REDACTED] and I work in the Office of the General Counsel of the United States Court of Appeals for the Federal Circuit as a Technical Assistant. Since September 2019, I have also served as the court's Director of Workplace Relations (DWR). In that role, I have assisted Judge Pauline Newman's former Judicial Assistant, [REDACTED] with certain Employment Dispute Resolution (EDR) matters relating to her chambers. The facts in this affidavit come from my own personal observations to the best of my recollection.*

1. Starting in early March 2023 and continuing over the subsequent weeks, [REDACTED] raised concerns to me about working in Judge Newman's chambers. Specifically, he described another chambers staff member, [REDACTED] as difficult to work with and described Judge Newman's lack of responsiveness in addressing the issues. At that time, [REDACTED] did not want to pursue a formal process under the EDR Plan but instead hoped for a more informal resolution and return to "normal" in chambers. One of the issues [REDACTED] mentioned in our earliest conversation was that [REDACTED] called him at 3am, asking for a 6am wake-up call. He asked for help in preventing additional after hours calls.
2. After our initial conversation and follow-up meetings, [REDACTED] gave me permission to talk to Chief Judge Moore about the situation, which I did throughout the process. The EDR Plan requires that judges "must take appropriate action when they learn of reliable information of wrongful conduct," Plan § IV.B.1. Accordingly, I understand that Chief Judge Moore attempted to address the concern about the after-hours phone calls with [REDACTED]
3. On April 5, 2023, Chief Judge Moore called me because she was concerned about an email exchange with Judge Newman, in which the Chief emailed Judge Newman, using [REDACTED] name as the subject line, to inform Judge Newman about the after-hours phone calls and to ensure that the uncomfortable situation with [REDACTED] does not continue. The Chief told me that Judge Newman directed her response to all judges and chambers' staff, rather than only to Chief Judge Moore. Because the email referenced an EDR matter and included the names of individuals involved, I was concerned that the distribution of that email to such a broader audience breached the confidentiality provision of the EDR Plan,† and I

* I have an obligation under the EDR Plan to maintain confidentiality and share information only to the extent necessary. [REDACTED] has waived that confidentiality as it concerns our interactions.

† The EDR Plan states that "[a]ll individuals involved in the processes under this Plan must protect the confidentiality of the allegations of wrongful conduct.

shared that concern with Chief Judge Moore. I asked if it was possible to claw back the email in an effort to mitigate the breach and limit the number of individuals who saw the confidential information about the informal EDR matter. I understand that the Chief and ITO were able to do that, though I do not know how many judges or chambers staff viewed the email before it was clawed back. I subsequently saw the email exchange in question.

4. On April 10, 2023, with no resolution to [REDACTED] concerns in place, I was asked to join Chief Judge Moore in her chambers to call [REDACTED] in an attempt to informally resolve the matter. [REDACTED] asked and was granted permission to record our phone call. Chief Judge Moore explained the narrow reason for the call was to address the concerns about the after-hours phone calls and asked [REDACTED] if she was willing to refrain from making them in order to resolve this matter. [REDACTED] did not agree to that, saying she would need to think about it, and could not give a time frame to provide a response. Chief Judge Moore then asked [REDACTED] if she was willing to refrain from making after-hours calls to [REDACTED] just for that day, and [REDACTED] again did not agree, repeating that she would have to think about it. Since that call, I have not received any response to the request to refrain from after-hours phone calls from [REDACTED] or her supervisor Judge Newman, nor am I aware of any response from [REDACTED] or Judge Newman to others or any agreement concerning the same.
5. On April 13, 2023, with no resolution to [REDACTED] concerns in place, [REDACTED] submitted to me a Request for Assisted Resolution under EDR Plan § IV.C.2. He submitted an Appendix to his Request the next day. The Request and Appendix allege various wrongful conduct about conduct in chambers under Judge Newman's supervision. Pursuant to EDR Plan § IV.C.2.b, I immediately shared the Request with Chief Judge Moore.
6. On April 14, 2023, Chief Judge Moore copied me on an email to Judge Newman, which provided notice to Judge Newman about the Request for Assisted Resolution, as well as Chief Judge Moore's decision to grant [REDACTED] request for interim relief, pursuant to EDR Plan § IV.B.4, by moving [REDACTED] workstation outside of chambers.
7. On April 18, 2023, I emailed Judge Newman about the Request for Assisted Resolution, offering to facilitate a discussion to address and hopefully resolve the concerns. As of the date of this affidavit, I have not received any response to my

Information will be shared only to the extent necessary and only with those whose involvement is necessary to address the situation." Plan § IV.B.1.

email or the Request for Assisted Resolution, nor am I aware of any response to the Request or associated communications.

8. In the morning of April 19, 2023, [REDACTED] came to my office immediately after a phone call he had with Judge Newman. He relayed to me that Judge Newman told him that unless he moves his workstation back to chambers by 11am, she would accept his resignation.
9. I immediately asked for and received a meeting with Chief Judge Moore and [REDACTED] Judge Prost and Judge Taranto were also in attendance during our meeting. [REDACTED] was visibly emotional when we walked into the Chief's chambers and needed a moment to gather his thoughts. The Chief told [REDACTED] at that meeting that she would grant his request to continue his employment at the court and she would make other work available to him. The Chief later forwarded to me an email she sent to Judge Newman explaining that [REDACTED] is "no longer an employee of the Newman chambers."
10. In several meetings I had with [REDACTED] over the course of many weeks, [REDACTED] discussed the toll that this entire experience was taking on his physical and mental well-being, including seeking help from medical professionals.
11. The Request for Assisted Resolution remains pending as of the date of this affidavit.

I swear and affirm under penalty of perjury that the foregoing is true and correct.

[REDACTED]

Sworn to and subscribed before me this 18th day of June, 2023

1/s/ Kaitie Kempell
District of Columbia

Signed and sworn to (or affirmed) before me on
6/1/23 by [REDACTED]
Date Name(s) of Individual(s) making statement

Kaitie Kempell
Signature of Notarial Officer
Office Administrator
Title of Office

Commission Expires: 4/30/26



AFFIDAVIT OF [REDACTED] [Affidavit 11]

1. My name is [REDACTED] and I work in the Information Technology Office (ITO) of the United States Court of Appeals for the Federal Circuit. My current title is Acting HelpDesk Supervisor. I have been employed in ITO since 2007. My responsibilities currently include supervising the work of ITO helpdesk team members. On May 16, 2023, I was asked to assist Judge Newman retrieve electronic files so she could file her financial disclosure report. The facts in this affidavit come from my own personal observations to the best of my recollection.
2. Around 9:00am on May 16, 2023, I received a message from the Clerk's Office asking if I could assist Judge Newman locate some files. I said yes. I assumed this was about her financial disclosure files because it is around this time every year that we get a call from her chambers to assist with this issue. At 2:30pm, I was told by the Clerk's Office that Judge Newman was ready for ITO to assist her. I asked ITO's Executive Assistant, [REDACTED] to accompany me.
3. Judge Newman had a very surprised look on her face when she saw me. I told Judge Newman that I was there to help retrieve some of her files and I asked what she was looking for. Judge Newman looked angry that I was there and said she needed her financial disclosure files. I said that I could help her with that request and asked Judge Newman if I could show her where the files were located on her computer. I started to walk toward Judge Newman's computer so that I could show her where the files were located, but Judge Newman angrily said no.
4. I asked Judge Newman if I could show her on the computer stationed where her judicial assistant would typically sit. She again in an angry voice said no. Around this point, Judge Newman said that [REDACTED] had stolen her files and that he had stolen her phone and computer. Then insisted that she wanted her "twenty-year old computer" and phone back in chambers. I understood Judge Newman to be referring to the computer and phone assigned to [REDACTED] that was originally moved out of chambers when [REDACTED] went to the Clerk's Office. The computer remained with [REDACTED] Although the phone was initially moved along with [REDACTED] it was later returned to chambers. Judge Newman must not have been aware that the phone had been returned.
5. I tried to explain to Judge Newman that the files were on her shared computer network drive if she would only look and that all files of Judge Newman's on the court computer that was assigned to [REDACTED] when he started to work for Judge Newman were moved to her shared network drive and that [REDACTED] no longer had credentials to access her files and drive. But Judge Newman did not want to hear it or let me get a word in. She was clearly upset and frustrated and

was walking back and forth mumbling about how her computer and phone had been taken away from her when that was not the case.

6. I asked Judge Newman if she wanted me to help a law clerk access the files so that she could file her financial disclosure report. She said no and indicated that she wanted someone in the Clerk's Office or [REDACTED] to do it for her.
7. At that point, I got worried that Judge Newman was getting so angry that she might collapse or have a heart attack if the conversation continued. I told Judge Newman that we would get back to her and told [REDACTED] that we should go.
8. I was left shaken and upset from this experience. I always had a good relationship with Judge Newman and was just trying to help her locate the files that I believe are on her network shared drive and do not believe were taken by [REDACTED].

I swear and affirm under penalty of perjury that the foregoing is true and correct.

[REDACTED]

Sworn to and subscribed before me this 18th day of May 2023
Washington, DC

/s/ Annette B. Young

ANNETTE B. YOUNG
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires November 14, 2026



United States Court of Appeals for the Federal Circuit

In re Complaint No. FC-23-90015

* * *

DECLARATION [Affidavit 12]

I, [REDACTED] declare from my personal knowledge that the following is true.

1. From the period of December 26, 2016, through the date of this declaration, I have served as the appointed chief deputy clerk for the U.S. Court of Appeals for the Federal Circuit.
2. As the senior deputy clerk, the circuit clerk has designated me as his primary custodian of the court's records and papers pursuant to Federal Rule of Appellate Procedure 45(d), which includes the data and information stored within the court's electronic filing system (CM/ECF).
3. Data from the CM/ECF can be retrieved in several ways for purposes of performing data analysis, including through formatted reports and through raw data extractions.
4. The Clerk's Office uses Microsoft SQL Server Reporting Services (SSRS) to prepare regular internal reports, including monthly reports for Federal Circuit judges including information about the status of their cases and overall internal statistical information.
5. The Clerk's Office also uses DbVisualizer to retrieve the raw data from CM/ECF that supports the formatted data on the SSRS reports.

6. On March 24, 2023, the Chief Judge provided me with an excerpt of the complaint in this case which contained certain statistical information concerning judge participation and assignments. I was asked to review the court's records as to the statistical information in the complaint and to provide an independent review to the special committee.
7. Because I do not have access to the underlying raw data in CM/ECF, [REDACTED] Quality Management Supervisor and CM/ECF Administrator, assisted me in compiling and reviewing the reports and data. For any data retrieval I could not accomplish on my own, I personally observed [REDACTED] perform the data retrieval and confirmed the search parameters with him at the time.

Judge Newman's Case Participation from June 1, 2022, through March 24, 2023

8. From June 1, 2022, through March 24, 2023, Judge Newman participated in 60 merits cases. This information was retrieved from the Case Participations report from SSRS (Exhibit A). The underlying cases supporting this calculation were retrieved from DbVisualizer using function *cafc_rpt_judges_case_participations* with date parameters June 1, 2022 through March 24, 2023; the results were filtered to show only Judge Newman's case participations "PN" and for argued cases only. The information from DbVisualizer was copied into Excel to be in a readable format (Exhibit B).

9. From June 1, 2022, through March 24, 2023, the remaining active judges participated in an average of 103 cases, with a standard deviation of 13.72. (Exhibit A). Judge Newman's participation in 60 cases was 3.14 standard deviations from the remaining active judge participation mean.¹

Judge Newman's Opinion Authorship from October 1, 2020, through September 30, 2021

10. From October 1, 2020, through September 30, 2021, Judge Newman authored 9 majority opinions. The next closest judge authored 33 majority opinions. This information was retrieved from the Judges' Assigned Opinion Workload report from SSRS (Exhibit C). The underlying cases supporting this calculation were retrieved from DbVisualizer using function *cafc_rpt_judges_assigned_opinion_workload* with date parameters October 1, 2020, through September 30, 2021; the results were filtered to show only Judge Newman's authorships "Newman" and excluded non-merits cases including miscellaneous cases, cases then-still pending (*disp_date = null*), and Rule 36 dispositions (*aopntype = 7*).

11. The information from DbVisualizer was copied into Excel to be in a readable format and with duplicate cases removed.² From this data, I calculated the time between the authorship assignment of the case and the opinion issuance

¹ The deviations from the mean calculation is the Z score value, or (Judge Newman's result-Remaining Judge Mean)/Standard Deviation.

² Duplicate cases will appear on this data extract whenever multiple opinions are issued in a case, such as if the panel issues a second opinion as part of a petition for rehearing.

data using the *Days(X, Y)* formula and the averaged the results. During this period, Judge Newman's average time from authorship assignment to opinion issuance was 249.11 days (Exhibit D).

12. From October 1, 2020, through September 30, 2021, the remaining judges who were in active service during this entire period authored an average of 42 majority opinions. This information was retrieved and calculated from the Judges' Assigned Opinion Workload report from SSRS (Exhibit C). The underlying cases supporting this calculation were retrieved from DbVisualizer using function *cafc_rpt_judges_assigned_opinion_workload* with date parameters October 1, 2020, through September 30, 2021; the results were filtered to show only active judge authorships³ and excluded non-merits cases including miscellaneous cases, cases then-still pending (*disp_date = null*), and Rule 36 dispositions (*aopntype = 7*).
13. The information from DbVisualizer was copied into Excel to be in a readable format and with duplicate cases removed. From this data, I calculated the time between the authorship assignment of the case and the opinion issuance data using the *Days(X, Y)* formula and the averaged the results.⁴ During this

³ Excluding Judge Newman, only the following judges were in active status and were assigned to merits panels during this entire period: Chief Judge Moore, Judge Lourie, Judge Dyk, Judge Prost, Judge Reyna, Judge Taranto, Judge Chen, Judge Hughes, and Judge Stoll.

⁴ Days where the case was stayed between authorship and opinion issuance were excluded from the calculation.

period, the remaining active judge average time from authorship assignment to opinion issuance was 60.61 days, with a standard deviation of 74.22 (Exhibit E). Judge Newman's average time from authorship assignment to opinion issuance of 249.11 days was 2.54 standard deviations from the remaining active judge participation mean.

Judge Newman's Opinion Authorship from October 1, 2021, through March 24, 2023

14. From October 1, 2021, through March 24, 2023, Judge Newman authored 10 majority opinions. This information was retrieved from the Judges' Assigned Opinion Workload report from SSRS (Exhibit F). The underlying cases supporting this calculation were retrieved from DbVisualizer using function *cafc_rpt_judges_assigned_opinion_workload* with date parameters October 1, 2021, through March 24, 2023; the results were filtered to show only Judge Newman's authorships "Newman" and excluded non-merits cases including miscellaneous cases, cases then-still pending (*disp_date = null*), and Rule 36 dispositions (*aopntype = 7*).
15. The information from DbVisualizer was copied into Excel to be in a readable format and with duplicate cases removed. From this data, I calculated the time between the authorship assignment of the case and the opinion issuance data using the *Days(X, Y)* formula and the averaged the results. During this period, Judge Newman's average time from authorship assignment to opinion issuance was 198.75 days (Exhibit G).

16. From October 1, 2021, through March 24, 2023, the remaining judges who were in active service during this entire period authored an average of 58.33 majority opinions. This information was retrieved and calculated from the Judges' Assigned Opinion Workload report from SSRS (Exhibit F). The underlying cases supporting this calculation were retrieved from DbVisualizer using function *cafc_rpt_judges_assigned_opinion_workload* with date parameters October 1, 2021, through March 24, 2023; the results were filtered to show only active judge authorships⁵ and excluded non-merits cases including miscellaneous cases, cases then-still pending (*disp_date = null*), and Rule 36 dispositions (*aopntype = 7*).
17. The information from DbVisualizer was copied into Excel to be in a readable format and with duplicate cases removed. From this data, I calculated the time between the authorship assignment of the case and the opinion issuance data using the *Days(X, Y)* formula and averaged the results.⁶ During this period, the remaining active judge average time from authorship assignment to opinion issuance was 53.17 days (Exhibit H), with a standard deviation of

⁵ Excluding Judge Newman, only the following judges were in active status and were assigned to merits panels during entire period: Chief Judge Moore, Judge Lourie, Judge Dyk, Judge Prost, Judge Reyna, Judge Taranto, Judge Chen, Judge Hughes, and Judge Stoll. Although Judge Cunningham was serving as of September 1, 2021, she was not assigned to a panel until November 2022.

⁶ Days where the case was stayed between authorship and opinion issuance were excluded from the calculation.

53.18. Judge Newman's average time from authorship assignment to opinion issuance of 198.75 days was 2.46 standard deviations from the remaining active judge participation mean.

Judge Newman Cases Under Submission

18. I reviewed the circulated September 2022 Cases Under Submission – Aged report, which reports the number of dates a case has been waiting for opinion following assignment. At the time, Judge Newman had only three opinion authorships pending, all over which were pending for more than 200 days (Exhibit I).⁷

Reassignment of Opinion Authorship from Judge Newman

19. In reviewing the recent history of reassignment of opinion authorship from Judge Newman, I personally retrieved and reviewed the docket sheets from CM/ECF. These docket sheets contain the non-public internal Clerk's Office entry information, including opinion authorship assignments and changes.

20. Judge Newman assigned herself [REDACTED] an unrepresented submitted case, on November [REDACTED] 2020. The case was reassigned to Judge [REDACTED] on July [REDACTED] 2022, after it had been pending an opinion for 624 days.

⁷ To avoid disclosing potential per curiam opinion authorships, I redacted the names of all authoring judges except for Judge Newman's authorship cases. Additionally, the remaining reports included in the original packet are omitted.

After reassignment to Judge [REDACTED] the opinion issued on August [REDACTED] 2022 (Exhibit J).

21. Judge Newman assigned herself [REDACTED], an argued case, on May [REDACTED] 2020. The case was reassigned to Judge [REDACTED] on May [REDACTED] 2021, after it had been pending an opinion for 380 days. After reassignment to Judge [REDACTED], the opinion issued on September [REDACTED] 2021 (Exhibit K).

22. Judge Newman assigned herself [REDACTED], an unrepresented submitted case, on February [REDACTED] 2022. The case was reassigned to Judge [REDACTED] on February [REDACTED] 2023, after it had been pending an opinion for 374 days. After reassignment to Judge [REDACTED], the opinion was issued on February [REDACTED] 2023 (Exhibit L).

23. Judge Newman assigned herself [REDACTED], an unrepresented submitted case, on May [REDACTED] 2020. The case was reassigned to Judge [REDACTED] on March [REDACTED] 2021, after it had been pending an opinion for 302 days. After reassignment to Judge [REDACTED], the opinion issued on March [REDACTED] 2021 (Exhibit M).

24. Judge Newman assigned herself [REDACTED], an argued case, on January [REDACTED] 2022. The case was reassigned to Judge [REDACTED] on October [REDACTED] 2022, after it had been pending an opinion for 269 days. After reassignment to Judge [REDACTED], the opinion issued on December [REDACTED] 2022 (Exhibit N).

25. Judge Newman assigned herself [REDACTED] an unrepresented submitted case, on September [REDACTED] 2022. The case was reassigned to Judge [REDACTED] on January [REDACTED] 2023, after it had been pending an opinion for 126 days. After reassignment to Judge [REDACTED], the opinion issued on March [REDACTED] 2023 (Exhibit O).

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of American that the foregoing is trust and correct.

Executed on April 6, 2023, in Washington, D.C.

[REDACTED]

Chief Deputy Clerk
U.S. Court of Appeals for the Federal Circuit

*Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, and O
have been redacted in their entirety for confidentiality purposes.*

United States Court of Appeals for the Federal Circuit

In re Complaint No. FC-23-90015

* * *

AFFIDAVIT [Affidavit 13]

I, [REDACTED] do hereby swear under oath that the following is true to the best of my knowledge.

1. From the period of December 26, 2016, through May 30, 2023, I served as the appointed chief deputy clerk for the U.S. Court of Appeals for the Federal Circuit. On May 31, 2023, I was designated as acting clerk of court for the U.S. Court of Appeals.
2. As then senior deputy clerk at all times relevant to this affidavit, the circuit clerk has designated me as his primary custodian of the court's records and papers pursuant to Federal Rule of Appellate Procedure 45(d), which includes the data and information stored within the court's electronic filing system (CM/ECF).
3. Data from CM/ECF can be retrieved in several ways for purposes of performing data analysis, including through formatted reports and through raw data extraction.
4. The Clerk's Office uses Microsoft SQL Server Reporting Services (SSRS) to prepare regular internal reports, including monthly reports for Federal Circuit judges including information about the status of their cases and overall internal statistical information.

5. The Clerk's Office also uses DbVisualizer to retrieve the raw data from CM/ECF that supports the formatted data on the SSRS reports.
6. The results of such internal data retrieval and statistical information is uniquely available to the Clerk's Office and the Federal Circuit judges. Aspects of this data are included in public reports we make available on the court's website, as well as in response to public information requests received by the court. However, any publicly released or available data necessary excludes much judge-specific information and, as such, is neither a complete nor fully accurate representation of the work of the court.
7. For example, when either a panel or the court designates an opinion as "per curiam," the Clerk's Office does not publicly disclose the authorship of the opinion on its website. Internally, though, the Clerk's Office counts and reports the authorship of per curiam opinions in its monthly reports provided to the Federal Circuit judges. As a result, a member of the public seeking to calculate authorship totals based on information from our website will report an undercounting of the opinions authored by any particular judge or judges.
8. Concerning the calculation of authorship time, a member of the public can retrieve the public docket of any case through the judiciary's PACER website. This public docket will provide the opening date of the case and the judgment and opinion issuance date of the case, which someone can

use to determine the amount of time it took for a case to be decided.

However, the public docket does not fully disclose information that may unavoidably increase the time it takes for a case to be decided, thus inaccurately inflating calculations for how long a judge takes to issue an opinion.

9. Instead, the internal Clerk's Office-produced reports provide the most accurate accounting of the time for an authoring judge to issue an opinion. The Clerk's Office calculations exclude case stays, cases where rebriefing or supplemental briefing occurs, and cases where authorship changes during the deliberative and authoring period. Therefore, the Clerk's Office numbers, which are calculated directly from the raw data, provide a more accurate calculation of opinion issuance time.
10. Additionally, any calculation of opinion issuance time must only run from when the case authorship is assigned and exclude all prior periods of the case. Before authorship is assigned in CM/ECF and the case is submitted to the panel for a decision, the authoring judge has neither responsibility for writing the decision nor control over the progression of the case.

Case Statistical Information

11. The following memorializes statistical data and information previously provided to the Special Committee during the course of their investigation.

12. Because I do not have access to the underlying raw data in CM/ECF, [REDACTED] Quality Management Supervisor and CM/ECF Administrator, assisted me in performing the following data retrieval and calculations. For any data retrieval I could not accomplish on my own, I personally observed [REDACTED] perform the data retrieval and confirmed the search parameters and results with him at the time.
13. I reaffirm under penalty of perjury the contents of my April 6, 2023 declaration with the following correction, including the methods used to extract the raw data from CM/ECF through DbVisualizer: Paragraph 17 should reflect that Judge Newman's average time from authorship assignment to opinion issuance of 198.75 days was 2.73 not 2.46 standard deviations from the remaining active judge participation mean.
14. From October 1, 2020, through September 30, 2021, Judge Newman authored 9 majority opinions. If her concurrences and dissents are included, she authored 25 opinions. This information was retrieved from the Terminations Report from SSRS (Exhibit A) and filtered to include precedential and nonprecedential opinions issued during the period. Information Column 14 includes information about which, if any, judge wrote an opinion separate from the majority. Judge Newman's code is "PN."
15. From October 1, 2020, through September 30, 2021, the remaining judges who were in active service during this entire period authored an average

of 42 majority opinions. If additional opinions, such as concurrences and dissents, are included, the average for this period is 44.

16. From October 1, 2020, through September 30, 2021, the next closest judge to Judge Newman had an average time of 143.2 days from assignment to issuance. This judge authored 40 majority opinions and an additional four items, for a total of 44 authorships.
17. From October 1, 2021, through March 24, 2023, Judge Newman authored 10 majority opinions. If her concurrences and dissents are included, she authored 28 opinions. This information was retrieved from the Terminations Report from SSRS (Exhibit B) and filtered to include only cases where Judge Newman authored a separate opinion from the court's opinion. Information Column 14 includes information about which, if any, judge wrote an opinion separate from the majority. Judge Newman's code is "PN."
18. From October 1, 2021, through March 24, 2023, the remaining judges who were in active service during this entire period authored an average of 58 majority opinions. If additional opinions, such as concurrences and dissents, are included, the average for this period is 61.
19. From October 1, 2021, through March 24, 2023, the next closest judge to Judge Newman had an average time of 106 days from assignment to issuance. This judge authored 42 majority opinions and an additional 12 items, for a total of 55 authorships.

20. From October 1, 2021, through March 24, 2023, 616 majority opinions were issued, with 195 (or 31.6%) of the opinions issued per curiam. Only one of the per curiam opinions was authored by Judge Newman. This information was retrieved from DbVisualizer using function *cafc rpt_judges assigned opinion workload* with date parameters October 1, 2020, through March 24, 2023; the results were filtered to show only Judge Newman's authorships "Newman" and excluded non-merits cases including miscellaneous cases, cases then-still pending (*disp date = null*), and Rule 36 dispositions (*aopntype = 7*). Cases with *aopntype = 4* or *5* are designated as per curiam. The information from DbVisualizer was copied into Excel to be in a readable format (Exhibit A). The information from DbVisualizer for all curiam opinions with authoring judges redacted was copied into Excel to be in a readable format (Exhibit B).
21. From May 1, 2022, through April 30, 2023, Judge Newman participated in 65 cases. This information was retrieved from the Case Participations report from SSRS (Exhibit E). The underlying cases supporting this calculation were retrieved from DbVisualizer using function *cafc rpt_judges case_participations* with date parameters May 1, 2022 through April 30, 2023; the results were filtered to show only Judge Newman's case participations "PN" and for argued cases only. The information from DbVisualizer was copied into Excel to be in a readable format (Exhibit D).

22. From May 1, 2022, through April 30, 2023, the average participation for the other active judges who sat for that same period was 129.1 cases (Exhibit A).¹ Judge Newman's participation was 3.2 deviations from the remaining active judge participation mean.

Case Assignment Information

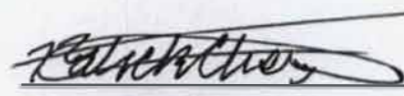
23. Judge Newman last served on a motions panel in January 2021.

I declare and affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

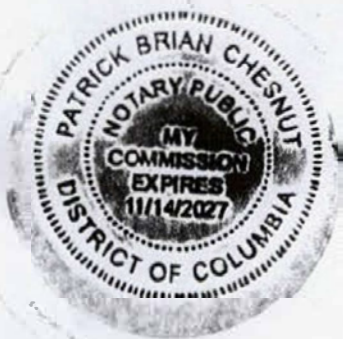
DATED this 31st day of May, 2023.



Sworn to and subscribed before me this 31st day of May, 2023.



Notary Public



¹ Because Judge Stark joined the court during this period, his participation numbers are excluded from the active judge data.

*Exhibits A, B, C, D, E, and F
have been redacted in their entirety for confidentiality purposes.*