

United States Court of Appeals for the Federal Circuit

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

IN RE COMPLAINT NO. 23-90015

Before MOORE, *Chief Judge*, PROST and TARANTO, *Circuit Judges*.

PER CURIAM.

ORDER TO SHOW CAUSE

On September 20, 2023, the Federal Circuit Judicial Council unanimously entered an order imposing a sanction on Judge Newman for misconduct. Judge Newman had refused to cooperate with this Committee's order of May 16, 2023, which required her to undergo certain medical testing and to provide specified medical records, and asked her to sit for an interview, to assist this Committee in an investigation to determine whether Judge Newman suffers from a disability that renders her unable to discharge the duties of her office. The Judicial Council determined that Judge Newman's refusal to comply with that order constituted misconduct and, as a sanction, ordered that Judge Newman would not be permitted to hear any cases "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 modification or rescission if justified by an end of the refusal to cooperate." Sept. 20 Order at 72–73. The Judicial Council also expressly directed that this Committee "shall maintain jurisdiction over this matter." *Id.* at 73.

On review of the Judicial Council’s order, the Judicial Conduct and Disability Committee of the Judicial Conference of the United States (JC&D Committee) found no error in the Judicial Council’s action and concluded that “[s]uspension of new case assignments for a period of one year, subject to renewal if the failure to cooperate persists or reconsideration if Judge Newman cooperates with the investigation, was an appropriate sanction.” *In re Complaint of Judicial Misconduct*, C.C.D. 23-01, 24–27 (U.S. Jud. Conf. Feb. 7, 2024).

Unfortunately, in the intervening months, Judge Newman’s refusal to cooperate with the Committee’s order has continued. The Committee has received no communication from Judge Newman indicating that the sanction imposed on her for refusal to cooperate with the Committee’s order has convinced her to change course and to begin to cooperate. Her refusal to cooperate continues to thwart the ability of this Committee to make a fully informed assessment concerning whether she suffers from a disability that renders her unable to perform the duties of her office.

Because the current one-year suspension from hearing cases will expire in a few months, and because the Judicial Council (with subsequent approval from the JC&D Committee) expressly made that sanction subject to renewal if Judge Newman should continue her refusal to cooperate, the Committee must begin the process to determine whether it should recommend to the Judicial Council that Judge Newman should be subject to a renewal of the suspension for her refusal to cooperate.

The Committee therefore directs Judge Newman to show cause why she should not be subject to a renewal of the suspension for her continued refusal to cooperate with the Committee’s May 16 Order.

Judge Newman is directed to respond in writing to this Order to Show Cause within 30 days—that is, by June 28,

2024. Her response should focus on explaining why her continued refusal to cooperate with the Committee's order should not be met with a renewal of the one-year suspension from case assignments. Alternatively, of course, Judge Newman may inform the Committee that she will comply with the Committee's May 16 Order

Within 14 days of this Order, by June 12, 2024, Judge Newman is directed to notify the Committee in writing whether she wishes to present oral argument, through counsel, on the question of a renewed sanction. See Rules for Judicial Conduct and Judicial-Disability Proceedings, Rule 15(d). If Judge Newman requests oral argument, the argument will be held on [REDACTED].

Judge Newman and Counsel are once again expressly cautioned concerning the confidentiality restrictions imposed by the Judicial Conduct and Disability Act, the Rules, and prior orders in this matter.

Accordingly,

IT IS ORDERED THAT:

(1) By 5:00 p.m. on June 28, 2024, Judge Newman may submit a written response to this Order to Show Cause addressing whether or not she should be subject to a renewed sanction for her continued refusal to cooperate with this Committee's Order of May 16, 2023. Her response must not exceed 30 pages of double-spaced, 12-point text and should be limited to addressing the question whether she should be subject to a renewed sanction and, in particular, whether the Judicial Council should renew the current one-year suspension from hearing cases for an additional period of one year. If Judge Newman does not submit a written response by this deadline, she will be deemed to have waived any response to this order;

(2) By 5:00 p.m. on June 12, 2024, Judge Newman must inform the Committee in writing whether she

requests to present, through counsel, oral argument to the Committee. If Judge Newman does not request oral argument by this deadline, she will be deemed to have waived argument. Any oral argument will be held on [REDACTED] at [REDACTED] in courtroom [REDACTED].

SO ORDERED: May 29, 2024.