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NCLA Asks U.S. District Court to Stop Unconstitutional Suspension of Circuit Judge Pauline Newman

Hon. Pauline Newman v. Hon. Kimberly A. Moore, Hon. Sharon Prost, Hon. Richard G. Taranto, and the Judicial Council of the Federal Circuit

Washington, DC (June 28, 2023) — Chief Judge Kimberly Moore and the Judicial Council of the U.S. Court of Appeals for the Federal Circuit have indefinitely suspended highly-respected veteran Judge Pauline Newman from hearing new cases—and they did so *before* investigating her. The 1980 Judicial Conduct and Disability Act does not authorize such indefinite or pre-investigatory suspensions. Another federal statute requires Federal Circuit panels to be comprised of a fair draw from *all* the Court’s active judges. Hence, suspending Judge Newman also infringes on the right of every Federal Circuit plaintiff and defendant to have their cases heard by a fair draw from all the Court’s active judges. Moreover, Judge Newman herself has an interest in fulfilling the duties of her judicial office, which cannot be taken away without due process of law. Judges singling out other federal judges for suspension is not due process and violates Congress’ sole constitutional authority to impeach federal judges.

To vindicate these constitutional and statutory principles, the New Civil Liberties Alliance has filed an amended [Complaint](#) and a [Motion](#) for a Preliminary Injunction on Judge Newman’s behalf, asking the U.S. District Court for the District of Columbia to order the Federal Circuit’s Judicial Council to restore Judge Newman’s full participation in the work of her court immediately. A presidentially-appointed, Senate-confirmed judge on the Federal Circuit since 1984, Judge Newman’s decades of esteemed work have revolutionized patent law. She is in sound physical and mental health, as confirmed by recent neurological examination. Despite Article III of the Constitution entitling her to hold office “during good behaviour,” the Judicial Council of the Federal Circuit suspended Judge Newman in March pending the results of an “investigation into potential disability/misconduct.”

Another major problem with the Judicial Council’s investigation is that the other Federal Circuit judges are acting as complainants, witnesses, and adjudicators simultaneously. To avoid such conflicts of interest, the standard practice would be to ask the Chief Justice of the United States to transfer the investigation to another circuit for impartial resolution. Chief Judge Moore and the Judicial Council have thus far refused to seek transfer. So, NCLA urges the U.S. District Court for the District of Columbia to not only enjoin Judge Newman’s unlawful and unconstitutional suspension, but also to enjoin further investigation by the conflicted Federal Circuit. If the investigation is to continue, due process of law requires neutral judges from another circuit to do it.

Since suspending Judge Newman in March, Defendants have changed their rationale for ordering it. The latest Order from the Judicial Council indicates the Council may continue her suspension even *without* finding misconduct on her part. This latest Order, like previous ones, was issued without any notice to or participation by Judge Newman, even though she remains a full-fledged member of the Judicial Council. Whatever the rationale, the Judicial Council may not punish Judge Newman before conducting its investigation, it cannot indefinitely suspend her from hearing future cases, and it cannot persist in investigating her despite its own conflict of interest. The myriad statutory and constitutional problems infecting this investigation provide ample reason for the district court to grant a preliminary injunction in this case.

NCLA released the following statements:

“The Federal Circuit’s conduct toward Judge Newman has been and continues to be inexplicable. Instead of transferring the matter to another circuit for an impartial resolution, Defendants have repeatedly undertaken actions that violate constitutional and statutory law. NCLA is saddened that this matter has become public and necessitated a resort to litigation, but we are resolved to defend Judge Newman’s rights, the public’s rights, and the judicial independence envisioned by the Constitution’s Framers.”

— **Greg Dolin, Senior Litigation Counsel, NCLA**

“As public evidence has mounted that Judge Pauline Newman remains fully capable of performing her duties as a judge of the U.S. Court of Appeals for the Federal Circuit, the Judicial Council’s rationale for suspending her has shifted from alleging mental and physical incapacity to now focusing on her alleged lack of cooperation with the unlawful process the Council has employed to keep her off the bench. NCLA is filing this Motion to ensure that Judge Newman is restored to the bench immediately—where she belongs—and that any subsequent investigation taking place adheres to statutory and constitutional strictures.”

— **Mark Chenoweth, President and General Counsel, NCLA**

For more information visit the case page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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