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Media Inquiries: [Ruslan Moldovanov](mailto:ruslan.moldovanov@ncla.org), 202-869-5237

NCLA Will Continue the Fight to End Unlawful Suspension of Federal Circuit Judge Pauline Newman

The Hon. Pauline Newman v. Hon. Kimberly A. Moore, Hon. Sharon Prost, Hon. Richard G. Taranto, et al.

Washington, DC (February 7, 2024) – Today, the Committee on Judicial Conduct & Disability [denied](#) the New Civil Liberties Alliance’s petition on behalf of the Hon. Pauline Newman to review the Judicial Council of the Federal Circuit’s unlawful order suspending her from hearing new cases for at least a year. The Council’s suspension came on top of the months the Council had already suspended her during the investigation, which violated the Judicial Conduct and Disability Act that the Council purported to be applying. The Judicial Conduct & Disability Committee upheld Judge Newman’s suspension, a decision with which NCLA thoroughly disagrees. NCLA will continue challenging Judge Newman’s suspension and seeking her rightful restoration to the bench.

Judge Newman’s indefinite suspension is unprecedented in American judicial history, exceeding sanctions imposed on judges who committed serious misconduct and improprieties. Throughout the process, the Judicial Council changed the rationale for its actions and even altered its allegations, all to accomplish an apparently predetermined outcome. In March 2023, the Judicial Council indefinitely suspended Judge Newman from hearing new cases before any formal investigation began. In violation of the due process of law, Chief Judge Moore and the Judicial Council refused to transfer the investigation to another circuit’s council, despite being fact witnesses to the events in dispute. The Judicial Conduct & Disability Committee erroneously decided that the Council did not abuse its discretion by refusing to transfer and that the Council did not deny Judge Newman due process.

The Judicial Council’s factually baseless and procedurally defective suspension of Judge Newman deprives her of the constitutional right and obligation to continue in her lifetime appointed judicial office. It also violates the procedural due process protections built into the statute and rules the Judicial Council claims to be enforcing.

Both the Council’s and the Committee’s actions are “administrative” rather than “judicial,” confirming NCLA’s right to challenge the Judicial Council in district court for overstepping its authority. The Committee’s decision unfortunately fails to protect the impartiality of judges, and it authorizes sanctions the Judicial Conduct and Disability Act does not permit, saying that the Council’s suspension order does not exceed its statutory authority.

The Committee’s ruling says the Judicial Council had a reasonable basis to order Judge Newman to undergo a mental examination early in the investigative process. But the Judicial Council lacked any factual predicate to make such a request. Judge Newman also voluntarily submitted to two separate mental health examinations by two expert medical professionals. She was properly tested. She passed twice and has since shown her unquestionable vigor in her recently issued opinions and speeches at [public events](#) honoring her myriad achievements. Oddly, the Judicial Council dismissed the validity of both medical examination reports, substantively mischaracterizing the examinations those doctors conducted and substituting their own Google search for the considered opinions of two board-certified medical experts. The Committee shockingly ruled that the Judicial Council did not err in rejecting these doctors’ reports. The U.S. District Court for the District of Columbia is still considering the merits of NCLA’s constitutional arguments against the Judicial Council’s conduct. It may yet restore the Honorable Pauline Newman to her full judicial duties—as it should.

NCLA released the following statements:

“Nothing has changed since last February – I continue to be fully able to perform the duties of the office which was entrusted to me. This has been confirmed by two physicians and numerous individuals who have interacted with me over the last twelve months. This battle is not just for me, but for the very concept of judicial independence and protection of our constitutional structure. I will continue to fight it.”

— **Hon. Pauline Newman, Active Judge, U.S. Court of Appeals for the Federal Circuit**

“While we are disappointed in the Committee’s decision, it is worth noting that the Committee confirmed, contrary to the Judicial Council’s district court briefs, that the Judicial Council was acting in an administrative rather than judicial capacity. This fact indicates its actions are subject to the same review as actions of any other agency. Judge Newman intends to fully press for such review in properly constituted Article III courts.”

— **Greg Dolin, M.D., Senior Litigation Counsel, NCLA**

“Today is a dark day for the federal judiciary. The Committee on Judicial Conduct & Disability fell victim to a false narrative about the events that have transpired over the past year. Numerous federal judges have privately encouraged NCLA’s defense of Judge Newman. Others have publicly questioned the Federal Circuit’s actions. Like me, they fear for a nation in which judicial independence is lost by the judiciary’s own misguided hand.”

— **Mark Chenoweth, President and Chief Legal Officer, NCLA**

For more information visit the case page [here](#) or watch the case video [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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