

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

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

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IN RE COMPLAINT NO. 23-90015

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**REPORT AND RECOMMENDATION  
OF THE SPECIAL COMMITTEE\***

**July 24, 2024**

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\* Because this is a redacted version of the Committee's Report and Recommendation, internal citations to page numbers may not be precise.

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

PER CURIAM.

## REPORT AND RECOMMENDATION

Almost one year ago, this Special Committee (Committee) issued a Report & Recommendation recommending that the Judicial Council sanction Judge Newman for misconduct based on her refusal to cooperate with an investigation to address serious concerns that she may suffer from a mental disability that impairs her ability to fulfill the duties of her office. The Committee had amassed extensive evidence raising concerns that Judge Newman may suffer from cognitive impairments material to her job, and it had issued orders (“medical examination orders”) directing Judge Newman to undergo specified full neuropsychological testing and a neurological examination with independent experts selected by the Committee and to turn over medical records to the neurologist and requesting that Judge Newman sit for an interview. Judge Newman refused to cooperate with the Committee’s orders. Based on the Committee’s recommendation, the Judicial Council unanimously entered an order suspending Judge Newman from hearing cases for one year, subject to renewal if Judge Newman’s misconduct should continue.

Over the past year, Judge Newman’s conduct has not changed. Judge Newman continues to refuse to cooperate with the Committee’s orders and continues to thwart the Committee’s ability to fulfill its responsibilities under the Judicial Conduct and Disability Act (Act). Absent the specified independent evaluation by medical experts ordered by the Committee (with specified access to medical records) in the medical examination orders, the Committee cannot come to a fully informed determination on whether Judge Newman suffers from a disability.

Accordingly, on May 29, 2024, the Committee issued an order directing Judge Newman to show cause why she should not be subject to a renewed sanction for her continued misconduct. The Committee has received a written response from Judge Newman and heard oral argument and, for the reasons set out in this Report & Recommendation, now concludes that a further sanction for continued misconduct is warranted.

This show cause proceeding has afforded Judge Newman the opportunity to present evidence supporting her position that no additional sanction should be imposed, including any evidence that might establish changed circumstances. Judge Newman has not presented any information to undermine the voluminous record the Committee compiled last year raising serious concerns about Judge Newman’s cognitive state. She has pointed the Committee primarily to a handful of occasions over the past year in which she delivered some public remarks or sat for an interview, and to the fact that the Supreme Court recently adopted reasoning that paralleled her reasoning in an opinion issued in 2022, more than eighteen months ago. None of this undermines the basis for the medical examination orders—the strong concerns established by the extensive record compiled by the Committee showing troubling signs of cognitive decline, often resulting in angry and

abusive behavior towards staff, with many witnesses describing increasingly erratic behavior in 2023.

Contrary to Judge Newman's assertions, Judge Newman's ongoing litigation against the members of the Committee (and the Judicial Council) in federal court also provides no basis for the Judicial Council to refrain from addressing her continuing misconduct with an additional sanction. In effect, Judge Newman seeks a stay of any sanction pending resolution of her federal court litigation. At the same time, however, she has not remotely established that the traditional factors warranting a stay (*i.e.*, likelihood of success on the merits; irreparable harm absent a stay; the public interest; and the balance of the equities) could be met here. In fact, the district court has already dismissed her federal case in its entirety as meritless. *Newman v. Moore*, No. 23-cv-01334 (CRC), 2024 WL 3338858 (D.D.C. July 9, 2024). In addition, Judge Newman unsuccessfully sought a stay last year from the Judicial Conduct and Disability Committee (JC&D Committee), which denied any relief and affirmed the sanction imposed by the Judicial Council.

Effectively staying any sanction would seriously impair the public interest in at least two ways. It would impair the expeditious functioning of the self-policing mechanism in the Act that Congress intended to allow the judiciary to swiftly address issues of disability. Congress expressly stripped federal courts of jurisdiction over most challenges to proceedings under the Act precisely to avoid the sort of litigation delays that Judge Newman now wants to create. In addition, in light of the extensive record developed in this case, permitting Judge Newman to resume hearing cases would raise a serious risk that litigants may be having their disputes decided by a judge who is not fit for executing the duties of her office. For all these reasons, the federal court litigation cannot justify forbearing from

imposing an additional sanction for Judge Newman's continued misconduct.

Finally, renewing a one-year sanction suspending Judge Newman from hearing cases does not, as she argues, remove her from her office nor does it punish her again for past misconduct. Instead, it applies a new, limited sanction for *continuing misconduct* in the form of Judge Newman's continuing refusal to cooperate with a duly authorized investigation. If Judge Newman's position were correct, and a sanction pursuant to the Act suspending a judge from hearing cases could never be renewed beyond a period of one year, sanctions under the Act would be wholly ineffective. Any judge could refuse to cooperate with a special committee investigation, wait out a suspension from hearing cases for one year, and then be free and clear from any significant consequences for refusing to cooperate. When Congress established the self-policing mechanism for the judiciary in the Act, it did not intend such a toothless regime that would leave Judicial Councils effectively unable to enforce cooperation with investigations.

For the reasons below, the Committee recommends that the Judicial Council impose a renewed sanction suspending Judge Newman from hearing cases at the panel or en banc level for an additional year, subject to renewal if Judge Newman's conduct persists and subject to reconsideration if Judge Newman's conduct changes.

## **I. RELEVANT PROCEDURAL BACKGROUND**

On July 31, 2023, this Special Committee, issued a 111-page Report & Recommendation, recommending that Judge Newman be sanctioned for her refusal to cooperate with the Committee's investigation into concerns that Judge Newman may suffer from a mental disability that prevents her from fully discharging the duties of her office. On multiple occasions in the course of its investigation,

based on voluminous supporting evidence, the Committee had ordered Judge Newman to undergo medical examinations to ascertain the nature and extent of a possible disability and produce medical records to assist the professionals performing the examinations in determining whether there was a disability, and had requested that Judge Newman sit for an interview with the Committee. April 7, 2023 Order at 2; April 17, 2023 Order at 2; May 3, 2023 Order at 13–14; May 16, 2023 Order at 25. Judge Newman refused to comply with the Committee’s orders that she undergo the specified medical testing and provide the requested medical records, and she also refused the request to sit for an interview with the Committee. *See, e.g.*, May 9, 2023 Letter at 3–5; May 25, 2023 Letter at 2–3; July 5, 2023 Brief at 2–3, 16–17. The Committee concluded that Judge Newman’s refusal to cooperate constituted misconduct. Report & Recommendation at 9 (“[T]he Committee believes that Judge Newman’s actions thwarting this investigation constitute a serious form of misconduct.”); *id.* at 60 (“Judge Newman’s refusal to cooperate . . . has impeded the Committee’s ability to fulfill its central task of reaching a recommended finding as to whether Judge Newman suffers from a disability that renders her unable to perform the duties of her office.”). The Committee recommended that Judge Newman be sanctioned by “not be[ing] permitted to hear any cases not yet assigned to an authoring judge, at the panel or en banc level, subject to consideration of renewal if the refusal to cooperate found here continues after that time and to consideration of modification or rescission if justified by an end of the refusal or by other changes,” *id.* at 109, for a “period of one year, or at least until she ceases her misconduct and cooperates such that the Committee can complete its investigation, whichever comes sooner,” *id.* at 111.



On September 20, 2023, the unanimous Judicial Council, in a 73-page Order (Judicial Council Order) with 393 pages of supporting evidence, concluded that voluminous evidence established reasonable concerns that Judge Newman suffered from a disability preventing her from effectively discharging her office, that the Committee had a reasonable basis for requiring Judge Newman to undergo the specified medical testing and provide medical records and to request that Judge Newman sit for an interview, and that Judge Newman's refusal, without good cause, to cooperate with the Committee's investigation constituted misconduct. Judicial Council Order at 72. The Judicial Council sanctioned Judge Newman by ordering that she not hear any new cases for a period of one year, subject to renewal of the sanction if Judge Newman's refusal to cooperate continued after the one year period, and subject to modification or rescission if justified by an end of the refusal to cooperate. *Id.* at 72–73.

Judge Newman petitioned the JC&D Committee for review of the Judicial Council Order. On February 7, 2024, the JC&D Committee denied Judge Newman's petition for review and affirmed the Judicial Council's Order. *JC&D Decision* at 29. The JC&D Committee found that Judge Newman had not shown good cause for her refusal to cooperate with the Committee. *Id.* at 21. The JC&D Committee found that Judge Newman was not denied due process and was in fact "afforded [with] more process than she was due under the Rules." *Id.* at 21–22. The JC&D Committee also found that the Committee had a reasonable basis for its medical examination orders, noting the Committee had developed "voluminous evidence that provided a basis for the May 16 order." *Id.* at 22–23 (citing Judicial Council Order at 19–37). The JC&D Committee explained that the Act provides that the Committee "shall conduct an investigation as extensive as it considers necessary," 28 U.S.C.

§ 353(c), and the commentary to Rule 13 specifically notes that “a special committee can request that a subject judge undergo a mental or physical examination when there is cause to believe the judge may be unable to discharge the duties of office because of a mental or physical disability.” *JC&D Decision* at 24. The JC&D Committee concluded that there was “no error in the Judicial Council’s conclusion that, based on the evidence gathered by the Special Committee, there was a reasonable basis for requesting that Judge Newman undergo a medical evaluation.” *Id.* at 25. The JC&D Committee added that the Judicial Council did not err in rejecting two reports from Judge Newman’s selected doctors as a substitute for the ordered medical examinations. *Id.* at 25–26.

Finally, the JC&D Committee found that the Judicial Council’s sanction did not exceed its authority under the Act. *Id.* at 26. Specifically, the JC&D Committee found 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.” *Id.* at 27. The JC&D Committee reasoned that “although the sanction is subject to renewal, unlike other suspensions, Judge Newman has the power to trigger reconsideration or modification if she decides to cooperate.” *Id.* at 28 (citing Judicial Council Order at 72–73).

On May 29, 2024, the Committee issued a Show Cause Order inviting Judge Newman to submit a written response “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.” Show Cause Order at 3. Judge Newman filed a response brief on June 28, 2024 (Response). Oral argument was held on July 10,

2024.<sup>1</sup> Judge Newman’s arguments are discussed in detail below.

## II. RECOMMENDED FINDINGS AND CONCLUSIONS

### A. Judge Newman’s New Evidence Does Not Establish Good Cause for Her Continuing Refusal to Comply with the Medical Examination Orders.

In her Response to the Show Cause Order, Judge Newman argues that three types of new information should eliminate any concerns about a potential mental disability, demonstrate that she is fit to serve as a federal judge, and warrant a conclusion that no further sanction for her refusal to comply with the Committee’s orders is justified. None of her arguments is persuasive.

1. First, Judge Newman points out that in *Rudisill v. McDonough*, 601 U.S. 294 (2024), the Supreme Court issued a ruling consistent with Judge Newman’s en banc dissent in that case and contrary to the en banc majority joined by many of her colleagues. We do not find this argument persuasive. The fact that the Supreme Court agreed with the same rationale advanced by Judge Newman in one recent case cannot eliminate or overcome the voluminous evidence the Committee previously gathered raising serious concerns about a potential mental disability affecting her performance of the duties of her office.

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<sup>1</sup> Oral argument, originally scheduled for July 12, 2024, was rescheduled to July 10 at the request of counsel for Judge Newman.

The Judicial Council Order summarized that evidence as follows:

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.

Judicial Council Order at 19.

That the Supreme Court adopted the position set out in one opinion issued more than eighteen months ago in December 2022, *see Rudisill v. McDonough*, 55 F.4th 879, 888–96 (Fed. Cir. 2022) (Newman, J., dissenting), cannot overcome the considerable mass of evidence raising concerns about Judge Newman's cognitive state affecting the performance of the duties of the office as a whole. That is especially the case given that much of this evidence related

to increasing concerns about Judge Newman's behavior in the months *after* that dissenting opinion had been issued.

2. Second, for similar reasons, we do not find persuasive Judge Newman's argument that her participation in four conferences or interviews over the past year eliminate the concerns about her cognitive state already found sufficient to support the medical examination orders.

We have reviewed Judge Newman's arguments about these four appearances. First, she references the ABA IP Section's 2023 IP Fall Institute. The Response includes a link to the program page, which has a recording of the one-hour interview of Judge Newman. Response at 7 (linking to [https://www.americanbar.org/groups/intellectual\\_property\\_law/events\\_cle/2023-ip-fall-institute-virtual-meeting/keynote-presentation-non-cle/](https://www.americanbar.org/groups/intellectual_property_law/events_cle/2023-ip-fall-institute-virtual-meeting/keynote-presentation-non-cle/)). Second, Judge Newman points to remarks at the George Mason University Center for Intellectual Property Innovation Policy's Annual Conference. Here, she included a link to a video of her remarks which lasted 7 ½ minutes. Response at 7 (linking to <https://www.youtube.com/watch?v=E4F7K4PEHaI&t=1280s>). Judge Newman claims she also participated as a panelist/moderator at the Fordham University Law School Intellectual Property Conference and as a panelist at a Paragraph IV Conference. No evidence was presented to substantiate the fact or extent of her participation. Her attorney claims, "she performed superbly," was "fully in control of her faculties," and that attendees at these meetings "continue to be impressed with Judge Newman's acuity." Response at 7. Attorney assertions are not evidence. For purposes of our analysis, we accept as true that Judge Newman did participate in these events, and we have reviewed the two videos she provided.

Judge Newman also provided a link to a 51-minute audio taped podcast by David Lat in which he interviews Judge Newman. *Id.* at 8. Mr. Lat stated, after meeting with her for several hours and interviewing her, that he thought her “completely lucid and sane.” *Id.* at 8 (quoting David Lat, *‘Integrity’: An Interview with Judge Pauline Newman*, ORIGINAL JURISDICTION (Jan. 17, 2024), <https://davidlat.substack.com/p/integrity-an-interview-with-judge-pauline-newman>). Though not cited in her Response, the link to the audio from the blog also contains a link to six video clips from the interview with Judge Newman, which range from just under 1 ½ minutes to just over 3 ½ minutes in length. We reviewed these as well.

Assertions from Judge Newman’s counsel that she performed “superbly” at these events is beside the point. Even if these appearances suggest that Judge Newman could deliver public remarks or conduct some friendly conversations without displaying gross evidence of a cognitive disorder, the lesson she asks us to draw is unsupported. The question under the JC&D Act process at issue concerns disability for fulfilling the particular duties of her office, which require abilities involving short-term memory, clarity about and concentration in working with numerous concrete facts, and stamina in doing so with multiple cases—abilities that go well beyond the ability to be or seem coherent in the settings Judge Newman now highlights. The Committee and Judicial Council had ample basis for concluding that, to answer the pertinent question, what is needed is what is specified in the medical examination orders—including a full battery of neuropsychological testing designed to assess specific cognitive functions. Appearances on a handful of public occasions, some very limited duration, cannot eliminate the need for the specified medical examinations to assess the job-performance in light of the substantial record developed in this case raising

reasonable concerns about ability to fulfill the duties of office. Judge Newman's own response supports this conclusion when it says: "Judge Newman's ability or disability to carry on her functions as a federal judge is purely a question of *medical science* and not of anything else." Response at 14 (emphasis added).

3. Third, Judge Newman claims: "no one, including her regular treating physicians and other medical professionals, save for members of this Committee, has suggested that Judge Newman's behavior or medical data would indicate need for any neuropsychological or psychiatric examinations." *Id.* at 8; *see also* Oral Arg. Tr. 35:22–36:1 ("The only people who suggested it are the members of this Committee."). To the extent Judge Newman claims that no one except the Committee found that the evidence of record created a reasonable basis for the Committee to order medical examinations and production of medical records, that is incorrect.<sup>2</sup> All eleven of Judge Newman's colleagues at the Federal Circuit unanimously found such a reasonable basis, *see* Judicial Council Order at 71–73, and all seven members of the JC&D Committee affirmed, *JC&D Decision* at 22–25. Every judge who has reviewed the Committee's recommendation for a sanction has concurred in the conclusion that the Committee had a reasonable basis for its medical examination orders.

As for the claim about Judge Newman's physicians, no evidence was provided to support this claim. The Committee requested "hospital records and medical, psychiatric or psychological, or other health-professional records of any

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<sup>2</sup> At Oral Argument, counsel went so far as to claim that the Supreme Court does not think "that Judge Newman is in need of a mental competency exam." Oral Arg. Tr. 41:1–3. The indefensibility of this claim is patent.

treatment or consultation in the last two years regarding attention, focus, confusion, memory loss, fatigue or stamina.” April 17, 2023 Order at 2; *see* May 16, 2023 Order at 4. These records likely would have shed light on the opinions of her treating physicians, which would aid the Committee in this investigation. Judge Newman has, unfortunately, consistently refused to comply with the order for her medical records. Especially in light of her refusal to provide the actual records from her physicians, her attorney’s characterizations of her treating physicians’ assessments cannot be treated as evidence and are entitled to no weight.

At Oral Argument, counsel for Judge Newman offered to submit an affidavit from Judge Newman herself attesting that neither Dr. Rothstein (who administered a six-minute cognitive test), nor Dr. Carney (who administered an 11-minute mental test) told her she needed to undergo any further neurological examinations. Oral Arg. Tr. 35:8–11. Such an affidavit from Judge Newman would carry little weight and certainly could not render unnecessary the full battery of neuropsychological testing that the Committee has been seeking for over a year. Judge Newman would be representing only that these doctors have not told her that she needs more testing. This is not the same as these doctors affirmatively providing a professional opinion that she does not need more testing. Second, the Committee and the unanimous Judicial Council made clear that it was essential to have an independent evaluation of Judge Newman. *See, e.g.*, Report & Recommendation at 62; Judicial Council Order at 51. The JC&D Committee held “neither the Special Committee nor the Judicial Council erred in rejecting Judge Newman’s request to be evaluated by an expert of her choosing, or in deciding that the evaluations of Judge Newman by physicians of her choosing did not carry sufficient probative value to undermine the basis for the



Special Committee’s concerns.” *JC&D Decision* at 26; *cf. In re: Complaint of Judicial Misconduct*, C.C.D. No. 17-01, at 36 (U.S. Jud. Conf. Aug. 14, 2017) (“We share the Judicial Council’s view that input from an independent medical expert is necessary to fully and fairly address Judge Adams’s mental condition and fitness to continue to serve as a judge.”). Even if one of Judge Newman’s personal physicians were to provide an opinion now, any statement from one of Judge Newman’s own physicians is no substitute for an independent evaluation. In particular, Dr. Rothstein is Judge Newman’s longtime personal friend and Dr. Carney is a former classmate of Judge Newman’s lawyer.

Drs. Rothstein and Carney are also not her treating physicians nor is it clear that they had access to all her medical records (such as those of any potential cardiologist or pulmonologist or hospitalizations), which may inform their decision-making. And a statement from one of her treating physicians (such as a cardiologist or pulmonologist) would also carry little weight in this context because those physicians are not specialists in cognitive disorders and the Committee has already determined that an independent evaluation by such a specialist is necessary to address the Committee’s concerns. For these reasons, an affidavit from Judge Newman attesting solely that her treating physicians have not told her that she needs further examinations—or a statement from one of her treating physicians to the same effect—would not allay the concerns that undergird the need for independent neuropsychological testing.

**B. Judge Newman’s Continued Failure to Appreciate the Seriousness of Her Actions Further Supports the Committee’s Conclusion That the Specified Medical Examinations Are Warranted.**

Far from providing evidence to allay the ample concerns supporting the medical examination orders, Judge Newman’s response—by what is absent from it—has reinforced the concerns about cognitive impairment. Nothing in the response faces up to her conduct, and why it raises various concerns, including regarding cognitive impairment, or presents meaningful evidence of changed circumstances. Indeed, Judge Newman appears, even now, to be unable to grasp that her behavior toward staff has been inappropriate and has had a serious impact on court staff.

During its investigation, the Committee received sworn testimony from staff members in multiple units within the Court including the Clerk’s Office, IT, HR, General Counsel’s office, and Judge Newman’s own chambers. This testimony detailed interactions with Judge Newman that indicated “significant mental deterioration” manifested in highly inappropriate and unprofessional behavior by the judge. Report & Recommendation at 33–34. As just a few examples, multiple staff members reported Judge Newman threatened to have her judicial assistant forcibly removed from the building or arrested. *Id.* at 42. Various staff members reported Judge Newman repeatedly accused them of stealing her computer, stealing her files, bugging her phone, and withholding secretarial services. *Id.* at 47, 34. She accused staff of “trickery,” being “shameful,” and acting as her adversary. *Id.* at 107. Judge Newman’s behavior toward staff was described as “agitated, belligerent and demonstrably angry,” *id.* at 48, “agitated and paranoid,” *id.* at 34, “hostile,” *id.* at 48, “visibly angry and

frustrated,” *id.*, “very bizarre and confusing,” *id.*, and “aggressive, angry, combative, and intimidating,” *id.* at 6. A staff member reported that, on one occasion, he feared Judge Newman “was getting so angry that she might collapse or have a heart attack if the conversation continued.” *Id.* at 48–49.

The court staff’s testimony described a pattern of behavior that often began with confusion, lack of comprehension and memory loss, which was at times followed by paranoia, agitation and frustration, and then at times escalated to anger, accusations, and even threats.

Staff members testified that Judge Newman’s treatment of them caused them physical and mental stress, affecting their well-being. *Id.* at 48–49. Judge Newman’s own law clerk started teleworking to avoid the “drama, politics, and stress,” *id.* at 43, requested to be transferred to another chambers, and ultimately resigned, stating that working in Judge Newman’s chambers was “taking a toll on my mental health,” *id.* at 49. Another member of her chambers reported that her behavior towards him caused him “severe anxiety and emotional distress.” *Id.* Clerk’s Office staff described their experience with Judge Newman as causing them “emotional stress and discomfort, including loss of sleep and heightened anxiety.” *Id.* An IT staff member explained that after dealing with Judge Newman, “I was left shaken and upset.” *Id.* Interactions with Judge Newman became so distressing that our clerk of court testified that he “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.” *Id.*

These reports evidence serious dysfunction that amply support the medical examination orders, as the JC&D

Committee, affirming the Judicial Council, confirmed. *JC&D Decision* at 24 (“We conclude that the Special Committee had a reasonable basis for requesting that Judge Newman undergo a medical evaluation based on the substantial evidence it had gathered that suggested that Judge Newman may suffer from a disability that prevents her from discharging the duties of office.”). Notably, Judge Newman has never disputed the testimony of the staff members, and she does not do so now.

Instead, Judge Newman has characterized the events they describe in belittling ways—casting blame on others and portraying herself as the victim. Judge Newman has never acknowledged that the behavior described in the sworn affidavits is not appropriate in the workplace, much less in a federal courthouse. Instead, she has maintained that none of this evidence 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.” August 31, 2023 Response at 48. And she has minimized the concerns raised by court staff as “minutia[e],” “petty grievances,” and as recently as the July 10 hearing she characterized the staff affidavits as “complaints by disgruntled staff.” July 5, 2023 Brief at 15; Oral Arg. Tr. 41:7.

Judge Newman’s apparent inability to understand that her conduct was inappropriate further underscores the need for mental fitness examinations. Our court employees are entitled to a workplace free from abusive, unprofessional, and inappropriate conduct. And the Court has an obligation to ensure that they have such a workplace. Judge Newman’s failure to acknowledge any impropriety in her conduct and her steadfast attempt to shift blame, continue to support the Committee’s determination that a full neuropsychological battery of medical testing is

necessary to assess whether Judge Newman has a disability that renders her unfit to perform the functions of her office.<sup>3</sup>

**C. The Committee Has Repeatedly Explained Its Request for an Interview.**

Judge Newman argues that the Committee has never explained the purpose of its request to interview Judge Newman. Response at 14. This is not accurate. The

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<sup>3</sup> The Committee has also noted concerns about Judge Newman’s inability to remember and adhere to confidentiality requirements, in particular in connection with an incident in which she disclosed confidential Employee Dispute Resolution information to nearly the entire court staff. *See, e.g.*, Report & Recommendation at 39. These concerns have also recently been reinforced. Prior to oral argument on the Show Cause Order, the Committee, in response to requests from Judge Newman’s counsel to make the Show Cause proceedings public, released the Show Cause Order but with the date of the argument specifically redacted. At argument, counsel acknowledged that he fully understood that the date of the argument was intentionally redacted. Oral Arg. Tr. 4:6–13. Apparently unbeknownst to counsel, however, Judge Newman had been in contact with the press and revealed this confidential information the day before the hearing. Ryan Davis, *Newman Loses Suit Against Fed. Circ. Over Suspension*, LAW 360 (July 9, 2024, 11:34 AM), <https://www.law360.com/articles/1856217/newman-loses-suit-against-fed-circ-over-suspension>; Ryan Davis, *Judge Newman Faces More Hurdles In Bid To End Suspension*, LAW 360 (July 10, 2024, 9:33 PM) <https://www.law360.com/legalethics/articles/1856472/judge-newman-faces-more-hurdles-in-bid-to-end-suspension>.

Committee explained in multiple orders the reasons underlying the request:

Judge Newman has suggested that the Committee's prior orders contain errors of fact, but she has not identified any specific errors. We have previously invited Judge Newman to meet with the Committee for an interview in which she could provide the Committee with information relevant to the Committee's investigation, including correcting any error of fact. April 17, 2023 Order. We again request that Judge Newman participate in a videotaped interview with the Committee which will provide her with an opportunity to clarify these matters.

May 16, 2023 Order at 23–24; *see also* Report & Recommendation at 97; Judicial Council Order at 5, 8, 16, 35, 36 n.15, 58.

In rejecting the request for an interview, Judge Newman asserts:

Judge Newman's ability or disability to carry on her functions as a federal judge is purely a question of *medical science* and not of anything else. Nothing the Committee might ask [in an interview] would shed any light on this question.

Response at 14 (emphasis added). We agree with Judge Newman to the extent she is recognizing that determining her fitness ultimately requires a specialist medical assessment—a concession on Judge Newman's part that supports the Committee's continued need for an independent medical examination despite other information she has

provided, such as her public remarks and interviews. An interview with Judge Newman would aid the Committee in understanding the basis of her repeated, general allegations of factual inaccuracies.

**D. The Medical Examinations the Committee Previously Ordered Remain Necessary.**

The Committee finds that the overwhelming evidence of Judge Newman’s troubling interactions with staff in the form of sworn testimony and other documentary evidence recounted in and attached to the Judicial Council Order, and her unreasonable case processing delays (when she had cases to process), continues to provide a reasonable basis for concern over Judge Newman’s ability to discharge the duties of her office. As the Committee has explained, a neurological evaluation and a full neuropsychological battery of tests are necessary.

Those medical examinations are quite limited in the burden they place on Judge Newman. The required neurological evaluation should last 30–45 minutes and will not involve invasive procedures, such as blood work or imaging studies. May 16, 2023 Order at 21–22. The required neuropsychological testing involves a clinical interview, administration of questionnaires related to personality and mental health symptoms, and cognitive testing. *Id.* at 22. No aspect of the process is physically invasive, and the entire examination is likely to take up to six hours. As the JC&D Committee explained, “Judge Newman has the power to trigger reconsideration or modification if she decides to cooperate.” *JC&D Decision* at 28. She can do so, as a necessary step in allaying the very serious concerns raised by overwhelming evidence, by undergoing the

ordered medical examinations (and supplying the required medical records).

The ask is so small and the responsibility of the job so great. The Court, the litigants, and the public deserve assurance that Judge Newman is mentally fit to decide the important cases which we are charged with resolving. Judge Newman argues:

*Judge Newman’s ability or disability to carry on her functions as a federal judge is purely a question of medical science and not of anything else.*

Response at 14. We agree that the proper specialist medical examinations and medical records are crucial to an evaluation of disability. Anecdotal accounts of her ability to participate on a conference panel or navigate an interview with a sympathetic blogger cannot overcome the voluminous evidence establishing a compelling need for the specific ordered independent medical examinations.

**E. Judge Newman’s Ongoing Litigation Does Not Establish Good Cause for Judge Newman’s Refusal to Comply, Nor Does It Provide a Reason for Suspending Any Sanction in This Proceeding.**

Judge Newman argues that she is justified in refusing to comply with the Committee’s orders—and that the Judicial Council should not have suspended her from hearing cases—while her challenge remains pending in federal court. Response at 16. We do not agree. Nothing in either the Act or background principles of law suggests that, after voluminous evidence has established a concern that a judge may be mentally unfit and the judge has refused to cooperate with the investigation into her potential



disability, that judge must be permitted to continue hearing cases while lengthy appeals proceed.

Judge Newman asserts that if she were to comply with the Committee's orders, she could not secure any effective relief in her ongoing litigation (which is now on appeal to the D.C. Circuit after the district court dismissed her complaint in its entirety). Response at 17. She does not elaborate on that assertion. But even if true, it does not justify denying immediate effect to the Judicial Council sanction.

Judge Newman claims that "awaiting the outcome of litigation does not impose any burden on the Committee or anyone else." *Id.* Particularly if what Judge Newman contemplates is that she would continue sitting on cases during lengthy appeals in federal court, we reject the assertion. The well-founded concerns about possible disability established by the record in this proceeding, together with the congressional policy in favor of expeditious resolution of complaints under the Act, provide ample reason not to suspend any sanction while Judge Newman pursues collateral litigation in federal court. The Judicial Council has an obligation to investigate and resolve the question whether Judge Newman is able to perform the functions of her office. As the Judicial Council concluded, failing to act where there is voluminous evidence raising a reasonable concern that she may suffer from a mental disability "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." Judicial Council Order at 2. It cannot be that a Judicial Council is without authority to impose sanctions for misconduct until all collateral challenges in federal court are exhausted. Indeed, that is especially the case given that Congress

expressly stripped federal courts of jurisdiction to hear most such collateral challenges, precisely to ensure that the internal policing mechanism for the judiciary established under the Act could proceed expeditiously and without lengthy litigation delays. *See* 28 U.S.C. § 357(c).

Judge Newman cites two decisions for the proposition that a right to judicial review may not be effectively nullified by imposing “debilitating,” “confiscatory,” “enormous,” or “severe” penalties for noncompliance during the process of judicial review. Response at 16 (quoting *Brown & Williamson Tobacco Corp. v. Engman*, 527 F.2d 1115, 1119 (2d Cir. 1975) and *Ex Parte Young*, 209 U.S. 123, 147 (1908)). But the cited cases involved unusual circumstances related to extremely onerous monetary penalties for noncompliance, and no monetary penalties are even at issue here. Judge Newman’s suspension from sitting is not comparable. Judge Newman clearly was not deterred from pursuing her district court litigation (or an appeal to the JC&D Committee) by the absence of a stay when the Judicial Council entered its suspension order (or when the Judicial Council earlier suspended Judge from sitting, under 28 U.S.C. § 331). Nothing has changed in this regard.

The Supreme Court long ago pointed to the availability of the opportunity to seek a stay as the means for addressing the due process concern Judge Newman raises about deterring judicial challenges. *See St. Regis Paper Co. v. United States*, 368 U.S. 208, 225–26 (1961) (cited by *Brown & Williamson*, 527 F.2d at 1118). Judge Newman sought a stay from the JC&D Committee pending its review of the Judicial Council Order, which the JC&D Committee denied as moot in its decision affirming the Judicial Council. *JC&D Decision* at 29 n.14. The standards for a stay are demanding, *see Ohio v. Environmental Protection Agency*, 144 S. Ct. 2040, 2052 (2024); *Nken v. Holder*, 556 U.S. 418,

434 (2009), and Judge Newman has not, in her Response, remotely justified a stay. Significantly, moreover, upon considering essentially the same factors that would inform a stay analysis, the district court (before it dismissed her case entirely) denied Judge Newman’s request for a preliminary injunction. *Newman v. Moore*, No. 23-cv-01334 (CRC), 2024 WL 551836, at \*11 (D.D.C. Feb. 12, 2024).

In short, there is no basis for Judge Newman’s argument that she should be exempted from any sanction until she has fully pursued her collateral litigation in federal court.

**F. Principles Derived from Civil Contempt Law Do Not Suggest That Imposing a Further Sanction Would Be Improper.**

Judge Newman next invokes an analogy to cases involving civil contempt to argue that it would be improper to impose a further sanction suspending her from hearing cases based on her continued refusal to comply with the Committee’s orders. Response at 21–23. Citing three decisions, she asserts that there comes a point at which a civil contempt sanction, entered to coerce compliance with an earlier order, must be terminated because it is clear that the sanction cannot achieve its purpose of coercing compliance. *Id.* at 22 (citing *In re Lawrence*, 279 F.3d 1294, 1300 (11th Cir. 2002); *CFTC v. Wellington Precious Metals, Inc.*, 950 F.2d 1525, 1530 (11th Cir. 1992); and *U.S. ex rel. Thom v. Jenkins*, 760 F.2d 736, 740 (7th Cir. 1985)). According to Judge Newman, “[t]hat time has been reached in this case,” Response at 22, because she continues to refuse to comply with the Committee’s orders and is adamant that she will not change course under any circumstances. Thus, she claims, “it will serve no purpose to extend the suspension.” *Id.* We reject Judge Newman’s rationale and her analogy

to civil contempt as a basis for concluding that no further sanction should be imposed.

Contempt law is its own body of law, with its own history and substantive and procedural standards for criminal and civil contempt. *See, e.g., Taggart v. Lorenzen*, 587 U.S. 554, 560–62 (2019); *Turner v. Rogers*, 564 U.S. 431, 441–42 (2011); *Mine Workers v. Bagwell*, 512 U.S. 821, 826–34 (1994); *McNeil v. Director, Patuxent Institution*, 407 U.S. 245, 251 (1972); *Maggio v. Zeitz*, 333 U.S. 56, 67–76 (1948); *United States v. Mine Workers*, 330 U.S. 258, 303–04 (1947). The present matter does not involve contempt, but rather the distinct regime established under the JC&D Act to ensure that the judicial branch can self-police. That regime amply justifies a suspension from sitting on cases based on Judge Newman’s renewed refusal to comply with the Committee’s orders, a refusal that once again thwarts an essential process established by Congress. Rewarding adamant non-cooperation by putting the non-cooperating judge back on the bench to decide cases would be fundamentally inconsistent with the Act. That is reason enough not to import the asserted principle of civil contempt law here.

In any event, Judge Newman has not shown that such a result is supported by her cited authorities even within civil contempt law. None of the three cited cases is similar to the present matter. They all involved incarceration as the coercive tool; the absence of any purpose for the sanction other than coercion; an underlying order that simply demanded turnover of funds or assets; and a focus on the individual’s ability to comply, not deliberate refusal to comply pure and simple. And in each case, the court actually *refused to lift the sanction* and instead merely noted the *possibility* that a further sanction might become futile at some point in the future.

None of the cited cases involved a suspension from performance of particular duties as the supposedly coercive tool, the presence of a purpose over and above any coercive purpose, naked adamancy of refusal to do what the individual plainly could do, or the possibility of putting the individual in a position where there was good reason to be concerned about public and private harm if the sanction were lifted. All of those elements are present here. There is no incarceration, or even personal financial penalty or the like, imposed. If suspension from sitting on cases would be deemed coercive at all under the invoked civil contempt principle, the proposed suspension order certainly does not “seek only” to coerce compliance with the underlying medical-exam order, *Turner*, 564 U.S. at 441.<sup>4</sup> Instead, any renewed suspension from hearing cases, like the original September 2023 suspension, would be separately justified as a sanction for Judge Newman’s continuing misconduct in refusing to cooperate with the important congressionally established self-policing mechanism under the Act. *See JC&D Decision* at 29 (quoting Judicial Council Order at 69) (affirming the earlier suspension on the basis that “the Judicial Council explained [in the earlier suspension decision] that the sanction was intended to ‘convey the seriousness of the misconduct that has prevented the proper functioning of the self-policing mechanism that Congress created for the judiciary’”). The request, moreover, is to return Judge Newman to deciding cases—creating a risk of harm to litigants and the public, given the ample justification for concern about disabilities connected to the decisional function. Judge Newman’s civil contempt

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<sup>4</sup> Coercion is not even mentioned in the Judicial Council Order, the JC&D Committee Decision, or the Special Committee Report and Recommendation addressing the September 2023 suspension.

argument therefore does not support her objection to further sanction here.

**G. Judge Newman Has Not Been Removed from Office.**

Judge Newman argues that several events over the last year demonstrate that she “has been suspended not just from hearing cases, but from her office.” Response at 12–14. She claims she “has been excluded from nearly every intra-circuit email distribution list and all court-related events.” *Id.* at 12. This is not accurate.

Consistent with her suspension from hearing cases, Judge Newman was removed only from distribution lists related to Federal Circuit cases. She remains on other distribution lists and has been included in court-related events. Judge Newman continues to receive emails from various court departments, including HR, Circuit Librarians, the Administrative Services Office (building and security), and IT. For example, via distribution lists, the IT department emails all judges (including Judge Newman) regarding network outages, server patches, new equipment upgrades, and the new International IT access policy. Judge Newman, like all other judges, will receive a new computer in the coming weeks. Like all other judges, she was offered a new iPad, which she will receive when iPads are distributed. Via email distribution lists, Judge Newman receives emails related to court security, building facilities, and court closures. She receives, via a court distribution list, informational services from our library, including, for example, the library’s weekly blurbs regarding articles published about the work of the court (“This Week’s Clipping File”).

Judge Newman has been invited to various court functions, including the Judges' Administrative Conference, the Annual Holiday Party and Recognition Ceremony, and the Federal Circuit Judicial Conference. Our Court held a Judges' Administrative Conference on November 9, 2023. Judge Newman was invited, originally indicated she would attend in person, and ultimately participated in the conference by phone. The Court has another Judges' Administrative Conference scheduled for September 5, 2024. All judges, including Judge Newman, were invited on June 17, 2024. Judge Newman responded that she plans to attend in person. Judge Newman has been invited to various court-related social events including our Annual Holiday Party and Recognition Ceremony (which she chose not to attend), Halloween Potluck on October 31 (which she chose not to attend), and ice cream social on July 11, 2024 (which she chose not to attend).

Finally, Judge Newman was invited by email (subject line: "Invitation to the 2024 Federal Circuit Judicial Conference") to the Federal Circuit Judicial Conference, which was held in Washington, D.C. on May 14, 2024. Exhibit 1. Her invitation made clear she was also invited to the VIP Reception at the event. *Id.* She responded by email to the event planning team, "I shall attend the Federal Circuit Judicial Conference." Exhibit 2. Without explanation, she did not attend the event. Following the event, her attorney gave a public statement inaccurately claiming that Judge Newman was not invited to the conference at all. Dani Kass, *Newman Wasn't At Fed. Cir. Conference, But She Was Invited*, LAW 360 (May 15, 2024, 10:18 PM), <https://www.law360.com/pulse/articles/1837541/newman-wasn-t-at-fed-circ-conference-but-she-was-invited>. That statement was later retracted in favor of a statement that Judge Newman had interpreted the invitation to be for the VIP Reception only. *Id.* There is no merit to this assertion.



The email in which she was invited was titled, “Invitation to the 2024 Federal Circuit Judicial Conference.” Her response to the event planning team evidenced no confusion. It clearly stated, “I shall attend the Federal Circuit Judicial Conference.” Exhibit 2. In her Response, Judge Newman has shifted ground again and argues that she was not invited to “substantively participate” in this event. Response at 12–13. Including Judge Newman, nine judges on our Court did not participate in substantive panels at the conference.<sup>5</sup>

Judge Newman next argues that she has been removed from office because the Chief Judge and/or Judicial Council denied her request to hire an administrative assistant and a law clerk. Response at 13. That argument is also without merit. The statute that governs chambers staff, 28 U.S.C. § 712, states: “Circuit judges may appoint necessary law clerks and secretaries.” In light of her suspension from hearing cases, Judge Newman currently has no case-related work. Nonetheless, Judge Newman continues to have a permanent, full-time law clerk. In her deposition, this clerk was asked to describe her “role” and “responsibilities.” Clerk Dep. 4:5–7 (attached to Report & Recommendation). She responded, “I am going to invoke my right under the Fifth Amendment to avoid self-incrimination.” *Id.* at 4:8–9. She proceeded to invoke the Fifth Amendment more than 50 times in response to questions about her role at the court and job responsibilities for Judge Newman. *See generally* Clerk Dep. It is unclear what this law clerk does, as she refused to answer any questions about her job responsibilities at her deposition, and equally unclear how

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<sup>5</sup> Eight judges did not participate at all and one judge, Judge Chen, also an active judge, did not participate in any substantive panels. He gave a brief introduction of another colleague who received an award.



an additional clerk for Judge Newman could be “necessary.” Judge Newman was asked about the duties for which a second clerk was necessary and responded: “I am an active judge, and my clerk needs are my decision, not yours.” Exhibit 3. Given these circumstances, Judge Newman’s request to hire a second clerk was denied by the unanimous Judicial Council after she refused to substantively respond to the request for information. Exhibit 3.

Regarding Judge Newman’s Judicial Assistant, her claim that she was denied an assistant is not accurate. As the Committee has already explained, Judge Newman was authorized to hire a new permanent assistant. Report & Recommendation at 84. A vacancy announcement was created. *Id.* It was posted in at least three different places and there were communications with Judge Newman regarding how she would like to receive applications. *Id.* It was Judge Newman who chose not to move forward with hiring of any of the candidates. While her request to hire a judicial assistant was approved, her separate request that the Court waive a salary offset restriction to allow her former Judicial Assistant to receive both her full pension and her full salary while working for Judge Newman was not approved. Approval of this request would have resulted in the Judicial Assistant receiving double compensation, over ██████ annually, making Judge Newman’s judicial assistant one of the highest paid court staff members at the Federal Circuit. Rules make clear that such a waiver is permitted only in “rare circumstances,” Guide to Judiciary Policy (Guide) Vol. 12 Ch. 6 § 650.50.10, where, for example, “temporary employment . . . is necessary due to an emergency involving a direct threat to life or property,” Guide at § 650.50.20. At the time the request for this special waiver was denied, Judge Newman had no cases to work on, was not permitted to hear new cases, and was not

permitted to participate in rehearings or rehearings en banc.<sup>6</sup>

Nor had Judge Newman submitted the appropriate information required to request a salary offset waiver. In her most recent Request for Salary Offset Waiver, Judge Newman selected “[f]ulfill functions critical to the mission of the agency or any component of that agency,” as the reason for the waiver. Exhibit 4. However, she did not attach any supporting documentation or explanation as required by the form and the Guide. *Id.* It was under these circumstances that Judge Newman’s request for a judicial assistant to receive both a full salary and a full pension was denied.

Judge Newman’s claims that these actions amount to suspending her from her office are entirely meritless.

**H. Judge Newman’s Arguments Attempting to Relitigate Issues That Have Already Been Decided Are Misplaced.**

Judge Newman’s remaining arguments are nothing more than attempts to relitigate issues that have already

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<sup>6</sup> Judge Newman argues that the salary offset waiver was previously approved when she brought her former judicial assistant back temporarily. Oral Arg. Tr. 16:14–16. That request, however, was accompanied by an explanation of the work for which the assistant was necessary. And first on the list was assisting Judge Newman in addressing her backlog of long-delayed opinions. When Judge Newman sought a further waiver, the request was denied because there no longer remained any case-related work for that judicial assistant to perform, much less long-delayed case-related work.

been resolved. As such, they are not appropriate responses to the Show Cause Order. For example, she argues that “at no point did the Committee or Judge Newman’s individual colleagues have anything approaching a reasonable basis to suspect any sort of disability.” Response at 1. That issue has been fully resolved by the unanimous Judicial Council and affirmed by the unanimous JC&D Committee. Each of these opinions was supported by a plethora of specific evidence, including Judge Newman’s own emails, sworn affidavits from various court staff, and court statistics. *See* Report & Recommendation at 31–60; Judicial Council Order at 19–33; *JC&D Decision* at 22–25. The Show Cause Order was not an opportunity for Judge Newman to relitigate fully resolved issues, but rather “to show cause why she should not be subject to a renewal of suspension for her continued refusal to cooperate.” Show Cause Order at 2.<sup>7</sup>

### I. Sanctions Are Appropriate

Judge Newman argues that additional sanctions are not appropriate. In her view, any sanction for her misconduct in refusing to cooperate with the Committee’s investigation must be temporary and can be imposed only “a single time as a remedy for past conduct” and thus must be “a one-time event.” Response at 19.

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<sup>7</sup> To the extent Judge Newman continues to argue that she will cooperate only if this proceeding is transferred, this issue also has already been fully and fairly decided. The JC&D Committee found “the Chief Circuit Judge and the Federal Circuit Judicial Council did not abuse their discretion by declining to request a transfer under Rule 26.” *JC&D Decision* at 19. The JC&D Committee also rejected her argument that it was permissible to condition her cooperation with this Committee on the granting of her request for transfer. *Id.* at 19–20.

The Judicial Council found Judge Newman to have committed misconduct by non-cooperation with its investigation. It found that “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.” Judicial Council Order at 68 (emphasis in original). The Judicial Council’s sanction for this misconduct was that Judge Newman “not be permitted to hear any case, at the panel or en banc level, 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.” Judicial Council Order at 72–73. The Judicial Council made clear that the sanction was intended to “convey the seriousness of misconduct that has prevented the proper functioning of the self-policing mechanism Congress created for the judiciary.” *Id.* at 69. The JC&D Committee affirmed, finding that “the sanction is consistent with sanctions imposed in a variety of contexts under the Act,” *JC&D Decision* at 27, and “although the sanction is subject to renewal, unlike other suspensions, Judge Newman has the power to trigger reconsideration or modification if she decides to cooperate,” *id.* at 28.

Judge Newman’s conduct has not changed. She continues to refuse to comply with the Committee’s orders. As a result, the Committee has still been unable to complete its investigation and serious questions about Judge Newman’s potential disability and her capacity to discharge the duties of her office remain unanswered. Because Judge Newman’s continuing misconduct (through her refusal to cooperate) is continuing to prevent the Committee from discharging its responsibilities under the Act, the

Committee concludes that a renewed sanction is warranted. If Judge Newman’s arguments insisting that any sanction for her misconduct can be only a one-time penalty were accepted, and if no renewed sanction were imposed, that would mean that any judge could defy orders from a special committee under the Act, wait the committee out, thwart the functioning of the Act, and be free and clear of any consequence for ongoing misconduct after a single year. The Committee does not believe that the Act created such a toothless self-policing mechanism for the judiciary to keep its own house in order. Continued defiance of a special committee’s orders can and should be met with a renewed sanction.

Judge Newman’s arguments to the contrary are meritless. Judge Newman claims that renewing the sanction is improper and points primarily to the Sixth Circuit, claiming that the Sixth Circuit “abjured recurring sanctions” in the *Adams* case. Response at 21 (citing *In re Complaint of Judicial Misconduct*, No. 06-13-90009 (6th Cir. Feb. 22, 2016) (*Adams 2016*)). That mischaracterizes *Adams*. The Sixth Circuit did not, as Judge Newman argues, conclude that renewing a sanction in the face of continued misconduct would be contrary to the language of the statute, that coercive sanctions are improper, or that a sanction must be dropped if it fails to secure compliance after a set period of time.<sup>8</sup> In *Adams*, the Special Committee found Judge

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<sup>8</sup> Counsel for Judge Newman also argues that her sanction is disproportionate to the sanction imposed on Judge Kindred of the District of Alaska, who “engaged in egregious conduct, including lying to the Chief Judge, the Special Committee, and the Judicial Council, in addition to sexual misconduct, et cetera.” Oral Arg. Tr. 28:17–20. We do not comment on the appropriateness of the sanction

Adams’ refusal to undergo the ordered medical testing was non-cooperation with the investigation. *Adams 2016* at 19–22. The Judicial Council sanctioned Judge Adams by ordering that “no new cases shall be assigned to Judge Adams for a period of two years, and his present docket shall be transferred to other judges.” *Id.* at 29. The JC&D Committee agreed that Judge Adams’ refusal to undergo a mental health evaluation by an independent psychiatrist selected by the special committee constituted misconduct. *In re Complaint of Judicial Misconduct*, No. 06-13-90009, at 2 (6th Cir. Jun. 27, 2018) (*Adams 2018*). The JC&D Committee vacated the sanction suspending Judge Adams from hearing cases solely because the complaint against Judge Adams did not relate to his inability to perform the adjudicative duties of his office—*i.e.*, to hear and decide cases. *In re Complaint of Judicial Misconduct*, C.C.D. No. 17-01, at 36–37 (U.S. Judicial Conf. Aug. 14, 2017). At the same time, however, the JC&D Committee made clear that continued refusal to cooperate in itself could justify sanctions, “including the prohibition of the assignment of new cases on a temporary basis for a time certain.” *Id.* at 39.

On remand, the Judicial Council determined that a mental fitness exam was no longer warranted because the judges of the Northern District of Ohio reported that Judge Adams’ “behavior had improved and stabilized,” “there had been no recurrence of the sort of behavior that occasioned the misconduct finding,” and “there had been no recent

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imposed by the judicial council of a sister circuit and note only that sanction imposed on Judge Newman by a unanimous Judicial Council was supported by voluminous evidence and has already been affirmed by a unanimous JC&D Committee. The propriety of the sanction cannot be affected by the case of Judge Kindred.

reports of courtroom misbehavior.” *Adams 2018* at 4. The Sixth Circuit Judicial Council did not “reced[e] from the demands in the face of litigation,” as Judge Newman alleges. Response at 20. Instead, Judge Adams corrected the behavior that underlay the initial complaints, which constituted changed circumstances and eliminated the need for any sanction. There is no similar change in behavior by Judge Newman here, and the Sixth Circuit’s decision in *Adams* to drop any further sanction is irrelevant.

We have reviewed again the extensive evidence and findings regarding the basis for serious concern about her ability to discharge the duties of her office. *See Report & Recommendation* at 31–60. We find that there have not been any changed circumstances eliminating the need for the medical testing and access to medical records previously ordered by the Committee. We also conclude that Judge Newman’s continued refusal to cooperate with the Committee’s investigation is serious ongoing misconduct that warrants a further sanction.

**III. RECOMMENDED SANCTION FOR CONTINUING MISCONDUCT**

Thwarting the Committee’s ability to complete the process established by Congress for determining whether a life-tenured judge suffers from a disability is a serious matter. The litigants whose rights are at stake in the cases before this Court deserve to have confidence that none of the judges ruling on their cases suffers from a cognitive impairment that may affect the resolution of their cases. They also deserve to have confidence that the mechanisms Congress established for addressing judicial disability function properly and that a judge with such an impairment cannot simply stymie the process. In addition, the court staff deserve to work in an environment free from abuse or anger directed at them by a judge whose behavior

and interactions in the workplace are distorted by a mental disability. When serious concerns are raised about a judge's fitness, they must be taken seriously and addressed expeditiously, and all judges must recognize their duty to facilitate that process. Under the circumstances, therefore, the Committee believes that Judge Newman's continued refusal to cooperate by undergoing the specified medical examinations, providing medical records, or even participating in an interview constitutes a serious form of continuing misconduct.

We recommend a further one-year sanction during which Judge Newman will not be permitted to hear cases at the panel or en banc level, subject to renewal if the refusal to cooperate found here continues after that time and subject to modification or rescission if Judge Newman alters her conduct and begins to cooperate with the Committee. This sanction is not for past misconduct. Instead, it addresses Judge Newman's *continuing misconduct* through her continuing refusal to cooperate with the Committee's orders. Judge Newman could, any day, agree to undergo the specified medical examinations and to provide her medical records as ordered by the Committee. Her misconduct is thwarting the investigation and making it impossible for the Committee adequately to perform the important function of determining whether she is fit to perform the duties of her office.

If Judge Newman undergoes the specified medical examinations and produces the specified medical records, the Committee will be able to complete its investigation and make a recommended finding as to whether Judge Newman suffers from a disability. Until Judge Newman cooperates and permits the Committee to make a finding on that issue, her continued non-cooperation justifies suspending case assignments for the fixed period of an



additional year, or at least until she ceases her misconduct and cooperates such that the Committee can complete its investigation, whichever comes sooner.

This report and recommendation has been unanimously adopted by the Committee.<sup>9</sup>

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<sup>9</sup> Accompanying this report is a statement of the vote. *See* Rule 17.

# United States Court of Appeals for the Federal Circuit

UNDER SEAL (NON-PUBLIC ORDER)

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IN RE COMPLAINT NO. 23-90015

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

PER CURIAM.

## STATEMENT OF THE VOTE

Pursuant to Rule 17 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, the Committee accompanies its report and recommendation to the Federal Circuit Judicial Council in this matter with this statement of the vote. The Committee unanimously adopts its report and recommendation. There are no separate dissenting or concurring statements by any Committee member.

# Redacted Supporting Exhibits<sup>1</sup>

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<sup>1</sup> The exhibits have been redacted to protect confidentiality.

# **Exhibit 1**

**From:** [Federal Circuit Judicial Conference](#)  
**To:** [Judge Pauline Newman](#)  
**Cc:** [Federal Circuit Judicial Conference](#)  
**Subject:** Invitation to the 2024 Federal Circuit Judicial Conference  
**Date:** Friday, April 5, 2024 9:24:12 AM

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Judge Newman,

Our Judicial Conference will be on Tuesday, May 14 at the JW Marriott Washington DC. The conference will be in the Grand Ballroom starting at 8:25 a.m. and ending at 4:00 p.m. You are invited to attend the VIP Reception that takes place from 11:40 a.m. to 12:30 p.m. in the Penn Avenue Terrace.

Please let us know if you are interested in attending and we will get you registered.

Sincerely,  
Judicial Conference Planning Committee

# **Exhibit 2**

**From:** [Judge Pauline Newman](#)  
**To:** [Federal Circuit Judicial Conference](#)  
**Cc:** [All Judges](#)  
**Subject:** Re: Invitation to the 2024 Federal Circuit Judicial Conference  
**Date:** Friday, April 5, 2024 11:49:26 PM

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I shall attend the Federal Circuit Judicial Conference.  
Judge Newman

Sent from my iPhone

On Apr 5, 2024, at 9:24 AM, Federal Circuit Judicial Conference

<[REDACTED]> wrote:

Judge Newman,

Our Judicial Conference will be on Tuesday, May 14 at the JW Marriott Washington DC. The conference will be in the Grand Ballroom starting at 8:25 a.m. and ending at 4:00 p.m. You are invited to attend the VIP Reception that takes place from 11:40 a.m. to 12:30 p.m. in the Penn Avenue Terrace.

Please let us know if you are interested in attending and we will get you registered.

Sincerely,

Judicial Conference Planning Committee

# **Exhibit 3**



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**From:** [REDACTED]  
**Sent:** Tuesday, March 19, 2024 4:24 PM  
**To:** Judge Pauline Newman <[REDACTED]>  
**Subject:** RE: Law Clerk [REDACTED] -- term adjustment

Judge Newman,

Respectfully, I refer you back to the statute that is cited in our prior correspondence from February 2, 2024 (attached), and the judicial council decision. [REDACTED] will be separated from the court on [REDACTED]

For the same reasons that the judicial council denied your request to extend [REDACTED] term, namely that you are not engaged in any court work, continue to have a full time permanent law clerk, and have failed to provide any justification or explanation as to why you need multiple law clerks under these circumstances, hiring additional law clerks will not be permitted at this time.

[REDACTED]



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

[REDACTED] | [www.cafc.uscourts.gov](http://www.cafc.uscourts.gov)

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**From:** [REDACTED]  
**To:** [Judge Pauline Newman](#)  
**Subject:** RE: Tenure of Law Clerk [REDACTED]  
**Date:** Tuesday, February 6, 2024 10:14:00 AM

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Judge Newman,

In light of the fact that you are not engaged in any court work, continue to have a full time permanent law clerk, and have failed to provide any justification or explanation (as requested) for why your term law clerk's term period should be extended, the judicial council has unanimously voted to deny the extension. Your term clerk is permitted to complete the term for which he was hired and his separation will be process, as HR previously indicated, effective [REDACTED]

Thank you,  
[REDACTED]

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**From:** Judge Pauline Newman [REDACTED]  
**Sent:** Friday, February 2, 2024 11:57 AM  
**To:** [REDACTED]  
**Subject:** Re: Tenure of Law Clerk [REDACTED]

[REDACTED]

I continue to need the law clerk services that [REDACTED] has been providing. I am an active judge, and my clerk needs are my decision, not yours. It is important to stabilize [REDACTED] date, so that continuity can be maintained. Please proceed promptly to adjust [REDACTED] date to at least the end of June 2024.

Judge Newman

Sent from my iPhone

> On Feb 2, 2024, at 11:19 AM, [REDACTED] wrote:

>

> Judge Newman,

>

> I am following-up on your January 31 email to [REDACTED] seeking to extend [REDACTED] clerkship to at least June 2024. As I previously explained to [REDACTED] by email, any request to extend his term clerkship needs to be accompanied by an explanation and justification for the need for his continued services.

>

> Because you have not heard new cases for nearly a year, you have been suspended from hearing cases, and you have had no pending cases since November 8, 2023, a justification is needed to determine whether his services as a law clerk are still necessary pursuant to 28 U.S.C. § 712 which only permits the appointment of "necessary law clerks and secretaries." Any justification needs to explain and take into account what specific duties of his are still needed and why those duties

cannot be performed by your career law clerk in light of your suspension and lack of remaining cases.

>

> In order to extend the term of [REDACTED] clerkship beyond [REDACTED], which is the original term for which he was hired, please send an explanation and justification of the need to extend his term appointment. You may send the justification directly to me.

>

> Thank you,

> [REDACTED]

>

> [REDACTED]

> Assistant Circuit Executive for Human Resources

> U.S. Court of Appeals for the Federal Circuit

> [REDACTED]

>

> -----Original Message-----

> From: Judge Pauline Newman

> Sent: Wednesday, January 31, 2024 5:23 PM

> To: [REDACTED]

> Cc: [REDACTED]

> Subject: Tenure of Law Clerk [REDACTED]

>

> Dear [REDACTED]

> [REDACTED] and I have agreed that his current clerkship will not end before the end of June 2024. Please assure that the records of his employ on my chambers staff are correct.

> Thank you.

> Judge Newman

>

> Sent from my iPhone

# **Exhibit 4**

## Request for Salary Offset Waiver Re-employed Annuitants - National Defense Authorization Act<sup>1</sup> (NDAA)

The National Defense Authorization Act (NDAA) for Fiscal Year 2020, allows for a waiver of dual compensation salary offset for re-employed civilian retirees (known as re-employed annuitants [REAs]) under certain conditions, if approved by the head of an agency. Direct hire authority for REAs is to meet temporary staffing and recruitment needs, and not to benefit the annuitant. When used to fill a permanent position, the employing office should refer to [Guide to Judiciary Policy, Vol. 12, Ch. 6, § 650.50](#) to determine if the criteria are met. This waiver authority is separate and distinct from the authority under the NDAA.

Pursuant to this authority, please contact your [Advisory Services Branch \(ASB\) circuit contact](#). Following consultation with your ASB circuit contact, the employing office will complete the information below in support of your request for a salary offset waiver under the NDAA. In addition to the form AO-70, the employing office must include the following attachments:

- ✓ Narrative supporting the need to hire a re-employed annuitant (see page two);
- ✓ Position description;
- ✓ Resume of re-employed annuitant;
- ✓ Copy of the most recent SF-50;
- ✓ Annuity statement; and
- ✓ Statement from re-employed annuitant that they are not willing to accept an appointment without a salary offset waiver.

Requests for salary offset waivers must be reviewed and approved *prior to* re-employed annuitants' entry on duty date.

### Position Information

Court Unit and District:	Court of Appeals: Chambers of Judge Pauline Newman
Circuit:	Federal Circuit
Duty Location:	Washington, D.C.
Is this a Remote Assignment:	duel assignment - remote and in chambers
Locality Pay Area:	Washington, D.C.
Salary:	██████████
Position Title and Grade	Judicial Assistant ██████████
Tour of Duty <sup>2</sup> :	Intermittent

### Re-Employed Annuitant Information

Employee Name:	██████████
Employee Date of Birth <sup>3</sup> :	██████████
Proposed Appointment Effective Date:	██
Date of Retirement:	██████████
Civil Service Annuitant (CSA) Number:	██████████
Was a Voluntary Separation Incentive Payment (buyout) received?	████
Proposed Not to Exceed (NTE) Date <sup>4</sup> :	June 14, 2024 (one year)

Judge Pauline Newman

---

Name of Appointing Authority

Judge Pauline  
Newman

Digitally signed by Judge Pauline  
Newman  
Date: 2023.12.05 12:31:49 -0500

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Signature of Appointing Authority

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Name of Chief Judge

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Signature of Chief Judge<sup>5</sup>

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Date of Request

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<sup>5</sup> Since authority for appointment of bankruptcy judges, bankruptcy administrators, and federal public defenders is vested with the court of appeals, the approval of the chief judge of the court of appeals is required to seek a waiver in such cases.

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UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT

- - - - - X  
In the Matter of: : SEALED  
Complaint No. 23-90015. :  
- - - - - X

Wednesday, July 10, 2024  
SEALED

Hearing in the above-entitled matter, held  
at the United States Court of Appeals for the Federal  
Circuit, 717 Madison Place, NW, Washington, DC, at  
3:00 p.m., ET, Wednesday, July 10, 2024, and the  
proceedings being taken down by Stenotype by Desirae  
S. Jura, RPR, and transcribed under her direction.

1 APPEARANCES:

2

3 JUDGES:

4 The Honorable KIMBERLY A. MOORE, Chief Judge

5 The Honorable RICHARD G. TARANTO, Judge

6 The Honorable SHARON PROST, Judge

7

8 On behalf of the Complainant:

9 GREGORY DOLIN, M.D., ESQ.

10 JOHN J. VECCHIONE, ESQ.

11 New Civil Liberties Alliance

12 1225 19th Street, NW, Suite 450

13 Washington, DC 20036

14 (202) 413-4177

15 greg.dolin@NCLA.legal

16 john.vecchione@ncla.legal

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

2 CHIEF JUDGE MOORE: So we are not going to  
3 put any time on the clock. We'll go as long as it  
4 feels productive.

5 MR. DOLIN: Good afternoon, Your Honor,  
6 Gregory Dolin for the Honorable Pauline Newman. With  
7 me is John Vecchione at the table.

8 As last time, before I begin, and with the  
9 Committee's permission, I would like to read some of  
10 our objections for the record.

11 First, as before, we are continuing to  
12 object to proceedings before this Committee of the  
13 Judicial Council of this Circuit due to the inherent  
14 risk of and the actual bias which is well documented  
15 in our prior submissions.

16 Second, we object to this Committee's  
17 orders closing this hearing given that no witness  
18 testimony or health issues are likely to be  
19 discussed.

20 Third, and relatedly, we object to the  
21 Committee's keeping even the date and time of these  
22 proceedings secret, which is not in keeping with the

1 Committee's own best practice or as the date and time  
2 of the last hearing was publicly released in its  
3 order of June 1st, 2023.

4 CHIEF JUDGE MOORE: Can I ask a question?

5 MR. DOLIN: Yes.

6 CHIEF JUDGE MOORE: You are aware of the  
7 fact that the date and time of this hearing was  
8 redacted?

9 MR. DOLIN: Yes.

10 CHIEF JUDGE MOORE: Are you also aware of  
11 the fact that your client announced it publicly  
12 yesterday?

13 MR. DOLIN: I am not aware of that, but.

14 CHIEF JUDGE MOORE: And that's another  
15 breach of confidentiality. Do you appreciate that?

16 MR. DOLIN: I am not going to speak for  
17 what Judge Newman did or did not say.

18 CHIEF JUDGE MOORE: Is it possibly a  
19 misquote of sort of coincidental proportion?

20 MR. DOLIN: Frankly, I am not going to  
21 comment on that, Judge Moore.

22 THE CLERK: Excuse me, Your Honor. The

1 court reporter is having trouble hearing Mr. Dolin.

2 CHIEF JUDGE MOORE: Correct, thank you.

3 MR. DOLIN: Is that because of the  
4 microphone, or should I just speak up louder?

5 THE COURT REPORTER: If you could speak  
6 up. Thank you.

7 MR. DOLIN: But my point is, I don't  
8 understand why the date and time was redacted when it  
9 wasn't last year. It baffles me as to why that is  
10 confidential and inconsistent with the Committee's  
11 own prior practice.

12 We also object to the Committee's delays  
13 in releasing Judge Newman's submissions. The rules  
14 of these proceedings do not bless the Chief Judge  
15 with discretion as to the timing of releasing  
16 materials and instead only permit timely redactions  
17 to protect witnesses and the like; and thus, the  
18 release in batches is wholly inappropriate.

19 THE CHIEF JUDGE: Mr. Dolin, you are going  
20 a little too fast and you're not really quite loud  
21 enough. We are having a little trouble hearing you  
22 here and she can't hear you at all.

1           MR. DOLIN: I will try to adjust both my  
2 speed and my volume.

3           THE CHIEF JUDGE: Thank you.

4           MR. DOLIN: Thank you.

5           Do I need to repeat?

6           We object to the Committee's delays in  
7 releasing Judge Newman's submissions. The rules of  
8 these proceedings do not bless the Chief Judge with  
9 discretion as to the timing of release of the  
10 materials and instead only permit timely redactions  
11 to protect witnesses and the like; and, thus, the  
12 release in batches is wholly inappropriate.

13           And finally, and perhaps most importantly,  
14 we continue to object to Judge Newman's continued  
15 illegal suspension from the duties of the office to  
16 which she was confirmed.

17           And so our appearance here today should  
18 not be viewed as a waiver of any of those objections;  
19 and, of course, we reiterate our request that all  
20 materials submitted to this Committee thus far,  
21 including all of the orders, letters, and briefs, as  
22 well as the transcript of these proceedings be

1 promptly released.

2                   So with these objections, I am ready to  
3 address the substance of today's hearing.

4                   As to the changed circumstances. First,  
5 Judge Newman's opinions in Rudisill, which was  
6 endorsed by the Supreme Court in contradistinction to  
7 the opinions of her colleagues, showed that she is  
8 fully able to perform her duties and do so  
9 competently.

10                   Second, Judge Newman's myriad of public  
11 appearances and speeches show her continued mental  
12 acuity. And, the events of the past year have  
13 further eroded confidence that this Committee can act  
14 as a neutral fact finder. These include Judge  
15 Newman's exclusion from the functions and  
16 communications within the Court; Judge Newman's  
17 exclusions from substantive portions of the Circuit's  
18 Judicial Conference; denial to Judge Newman of her  
19 ability to hire staff, and even personal slights as  
20 again documented in our response.

21                   CHIEF JUDGE MOORE: Would you mind if I  
22 ask you to elaborate on some of those?

1                   MR. DOLIN: Absolutely.

2                   CHIEF JUDGE MOORE: Could we start with  
3 the Judicial Conference. It is my understanding, and  
4 you gave I guess a quote to Law 350 on May 14th that  
5 indicated that Judge Newman was "not invited to  
6 attend the Federal Circuit's Judicial Conference."  
7 And then on May 15, you pivoted and indicated that  
8 you found the invitation after digging through  
9 emails. And you went on to say that you and Judge  
10 Newman read the invitation to mean she had only been  
11 invited to a VIP reception.

12                   Do you still hold that position? Because  
13 in your response you said she wasn't invited to  
14 substantively participate, and I am trying to  
15 understand what you mean by "substantively  
16 participate."

17                   MR. DOLIN: So number one, the way I read  
18 the email -- and perhaps it was not very  
19 well-phrased, but it does seem that she was invited  
20 mostly to the social functions.

21                   As to what I mean by substantively --

22                   CHIEF JUDGE MOORE: Well, you read the

1 email to say mostly to the social functions? Do you  
2 understand that she was also invited to the  
3 conference itself?

4 MR. DOLIN: Again, I think the email could  
5 be interpreted in one of two ways, and she took it as  
6 an invitation solely to social functions.

7 CHIEF JUDGE MOORE: Even though the  
8 subject of the email says: Invitation to the 2024  
9 Federal Circuit Judicial Conference?

10 MR. DOLIN: Yes.

11 CHIEF JUDGE MOORE: So even though the  
12 invitation says you are invited to the 2024 Judicial  
13 Conference, you think that means she was only invited  
14 to the social portions?

15 MR. DOLIN: I think if you read the  
16 substance of the email, that is an entirely  
17 legitimate way to read it.

18 CHIEF JUDGE MOORE: Well, how can that be  
19 when she responded to the invitation -- which I know  
20 you have her emails. She responded to the invitation  
21 that says, Subject: Invitation to the 2024 Federal  
22 Circuit Judicial Conference. And her response is: I

1 shall attend the Federal Circuit's Judicial  
2 Conference, Pauline Newman.

3 MR. DOLIN: Again, I suggest that that  
4 email can be read as invitation to the social  
5 functions of that conference, which of course  
6 occurred at the conference. More to the point --

7 CHIEF JUDGE MOORE: Do you understand,  
8 then, her response, "I shall attend the Federal  
9 Circuit's Judicial Conference," to not mean that she  
10 was attending the Federal Circuit's Judicial  
11 Conference?

12 MR. DOLIN: Obviously social events are  
13 part of the Federal Circuit Judicial Conference.  
14 But, Judge Moore, but that's not the point. The  
15 point is she was excluded from the -- leaving aside  
16 the semantics of that email and the response, the  
17 point is, unlike other judges of this Court, she was  
18 not invited to participate in any of the panels, she  
19 was not invited to participate in any of the  
20 substantive proceedings of the Judicial Conference.  
21 And that shows the disparate treatment of Judge  
22 Newman as compared to the members of this panel and



1 her other colleagues.

2 CHIEF JUDGE MOORE: Just so I understand,  
3 is your argument today that she wasn't invited to the  
4 conference, or she wasn't invited to be on a panel at  
5 the conference?

6 MR. DOLIN: Either or both. I don't think  
7 it matters because, again, it shows that she was  
8 treated disparately. Whether you read it she wasn't  
9 invited to participate substantively or whether she  
10 wasn't invited to be there at all, it doesn't matter.  
11 The point is that she was treated differently from  
12 all the other judges, even though her suspension --  
13 constitutional or not -- did not include suspension  
14 from all the functions, merely from suspension from  
15 assignment of cases.

16 Is there any other points that you wanted  
17 to go through; some of these points, is there any  
18 other point you wanted me to elaborate on?

19 CHIEF JUDGE MOORE: Sure. You also  
20 indicated, I think, that Judge Newman's request to  
21 hire an administrative assistant was denied. Could  
22 you elaborate on that?

1                   MR. DOLIN: My understanding is that after  
2 several requests to re-up the contract of former  
3 assistant [REDACTED] that was denied, as well as  
4 my -- and I have looked at the Federal Circuit  
5 website. Maybe I didn't look particularly well, but  
6 I did not see an announcement for another  
7 administrative assistant being currently posted on  
8 that website.

9                   JUDGE PROST: You are saying that you  
10 didn't see a post --

11                   MR. DOLIN: I didn't see -- I didn't see  
12 that there is a current search going on for an  
13 administrative assistant. Maybe I did not look well  
14 enough.

15                   JUDGE PROST: That would have been at the  
16 time after [REDACTED] left that you were looking for  
17 an announcement for a new judicial assistant?

18                   MR. DOLIN: Yes. So my understanding is  
19 that Judge Newman asked to re-up [REDACTED] and that  
20 was denied, and there is no other search ongoing. My  
21 also understanding is that she was denied an ability  
22 to extend the term of her law clerk or to hire a new

1 one.

2 CHIEF JUDGE MOORE: I am sorry to  
3 interrupt, but I want to stick with the judicial  
4 assistant for a second. You realize that there is  
5 evidence in the record in the form of [REDACTED]  
6 declaration and affidavit, which you have read, the  
7 director of Human Resources, that Judge Newman was  
8 approved as far back as April 27 of 2023 to hire a  
9 new judicial assistant; that [REDACTED] worked with  
10 her over a period of time to prepare a vacancy  
11 announcement; that vacancy announcement was posted on  
12 multiple websites; that applications were collected  
13 in batches to give to Judge Newman, and that the ball  
14 was in her court to proceed with interviews, which I  
15 of course don't know if she did or not.

16 But how was she denied the ability to hire  
17 a judicial assistant when a vacancy announcement was  
18 prepared, she was told it was approved, it was posted  
19 on multiple websites, she was given the applications?  
20 How does that translate into her being denied the  
21 ability to hire a judicial assistant?

22 MR. DOLIN: I would like to again point

1 out that she asked to rehire [REDACTED]. That was  
2 denied.

3 CHIEF JUDGE MOORE: What is your evidence  
4 that it was denied?

5 MR. DOLIN: That was emails from you,  
6 Judge, to Judge Newman saying that request is denied.

7 CHIEF JUDGE MOORE: What request was  
8 denied?

9 MR. DOLIN: To re-up [REDACTED] contract.

10 CHIEF JUDGE MOORE: There is no email that  
11 suggests that she can't hire [REDACTED]. I'm curious  
12 what you are referring to.

13 MR. DOLIN: I was referring to the fact  
14 that [REDACTED], in order to be hired, needs certain  
15 waivers, which she approved on two prior occasions  
16 and declined to approve on the third occasion.

17 CHIEF JUDGE MOORE: So I didn't -- to be  
18 clear, is it correct to say I did not say she  
19 couldn't hire [REDACTED]. I said, or I determined,  
20 that a salary offset waiver which would result in  
21 [REDACTED] being paid [REDACTED] per year, and which  
22 only, according to the rules, can be granted in rare

1 circumstances. And where there were examples of  
2 those rare circumstances entail that I denied that  
3 request.

4 Is that what you understand?

5 MR. DOLIN: That is what I understand.

6 CHIEF JUDGE MOORE: So to be clear, that  
7 means she still could have hired [REDACTED], correct?

8 MR. DOLIN: I don't -- again, I don't know  
9 if she could have hired her given the fact that [REDACTED]  
10 [REDACTED] is an annuitant and would have been unwilling  
11 to take the job without that offset waiver.

12 So I guess in some sort of cosmic sense,  
13 yes, I suppose she could have hired her. But in the  
14 reality, given the fact that [REDACTED] would  
15 certainly not give up her well-earned pension to take  
16 a job that would pay her less, she was not an  
17 available candidate absent that offset. Especially,  
18 and as documented, that how much she would have been  
19 paid is somewhat irrelevant because it would not have  
20 cost the Court anything extra. Hiring a different  
21 person would have required a salary to that person,  
22 and [REDACTED] would have kept her annuity.

1 CHIEF JUDGE MOORE: Would it cost the U.S.  
2 Government something?

3 MR. DOLIN: No, it wouldn't. Because [REDACTED]  
4 [REDACTED] would have kept her annuity and the salary  
5 would be paid to a different person. Whether the  
6 salary is paid to a different person or to [REDACTED]  
7 is irrelevant for purposes of total compensation.

8 CHIEF JUDGE MOORE: Does the Judiciary  
9 have rules on the circumstances under which people  
10 can receive that double compensation?

11 MR. DOLIN: I'm sure it does.

12 CHIEF JUDGE MOORE: And do those rules say  
13 rare circumstances?

14 MR. DOLIN: My point is, our submission is  
15 that the circumstances didn't change from the first  
16 approval to the second. Additionally, as I had  
17 mentioned, she was denied the opportunity to extend  
18 the term of her law clerk or to hire a new one. As  
19 well, mentioned, she was precluded from  
20 communications within the court.

21 CHIEF JUDGE MOORE: Why don't we talk  
22 about the law clerk for a second.

1 MR. DOLIN: Mm-hmm.

2 CHIEF JUDGE MOORE: She continues to have  
3 a permanent law clerk, [REDACTED]; is that correct?

4 MR. DOLIN: That is correct.

5 CHIEF JUDGE MOORE: And then when  
6 [REDACTED] was expressly asked what her duties were  
7 that she performs as Judge Newman's law clerk, she  
8 pled the Fifth Amendment.

9 MR. DOLIN: I am not here representing  
10 [REDACTED].

11 CHIEF JUDGE MOORE: I didn't expect you to  
12 be. But you are aware of those facts?

13 MR. DOLIN: I am.

14 CHIEF JUDGE MOORE: So do you understand  
15 what the Fifth Amendment means, when you plead the  
16 Fifth Amendment, what that implicates?

17 MR. DOLIN: Yes.

18 CHIEF JUDGE MOORE: Can you explain it to  
19 me?

20 MR. DOLIN: Again, I am not here  
21 representing [REDACTED] --

22 CHIEF JUDGE MOORE: I know.

1           MR. DOLIN: -- or suggesting whether or  
2 not that pleading was proper or improper.

3           So I know what the Fifth Amendment means.  
4 I know it's a privilege against self-incrimination.  
5 Whether or not [REDACTED] pleaded correctly or  
6 incorrectly is entirely beyond my ken.

7           CHIEF JUDGE MOORE: Is it fair to say that  
8 when someone pleads the Fifth Amendment, they are  
9 refusing to answer questions on the grounds it can  
10 cause them to admit a crime?

11          MR. DOLIN: As a general matter, yes.

12          JUDGE PROST: Are you aware that the  
13 questions asked of [REDACTED] included what she does  
14 every day?

15          MR. DOLIN: I have read the transcript.  
16 But, again, I don't see what that has to do with  
17 Judge Newman. Judge Newman doesn't control  
18 [REDACTED] or her testimony. I don't control [REDACTED]  
19 [REDACTED] nor represent her. I don't see what it has  
20 to do with the ability of Judge Newman to extend the  
21 term of a totally different law clerk.

22          CHIEF JUDGE MOORE: Well, I guess the



1 question is -- and you are familiar with all the  
2 emails on this as well?

3 MR. DOLIN: I am.

4 CHIEF JUDGE MOORE: You are. Okay, good.  
5 So the Judicial Council unanimously denied the  
6 request, as you know. It was all in writing. And  
7 they did so after asking Judge Newman -- pointing her  
8 to the statute. You're familiar with this email.

9 MR. DOLIN: I am familiar with a statute.

10 CHIEF JUDGE MOORE: I just wanted to make  
11 sure. And the emails?

12 MR. DOLIN: Yes.

13 CHIEF JUDGE MOORE: I just want to make  
14 sure. And the statute says circuit judges may  
15 appoint necessary law clerks.

16 And in light of the fact that Judge Newman  
17 is no longer hearing cases, she has a permanent law  
18 clerk on board still; she was asked what the new  
19 clerk's duties would be, what they are necessary for,  
20 and Judge Newman refused to provide any answer.

21 MR. DOLIN: My point is whether or not the  
22 Judicial Council did or did not vote on this.

1 Actually, it goes to my point that the treatment of  
2 Judge Newman over the course of the preceding year  
3 and the past year has further deteriorated Judge  
4 Newman's and our confidence in this Committee or the  
5 Judicial Council being able to neutrally adjudicate  
6 the issue before it.

7 CHIEF JUDGE MOORE: But if a judge doesn't  
8 have any cases, would it surprise you that they have  
9 law clerks still?

10 MR. DOLIN: As I pointed out in our  
11 response to the show cause order, the denial of Judge  
12 Newman's ability to hire law clerks was not part of  
13 the sanctions imposed on her.

14 For example, in contradistinction to what  
15 happened to Judge Porteous. When he was suspended,  
16 there was explicit sanction denying him the ability  
17 to hire staff or law clerks. This was done entirely  
18 absent authority as either in -- it was done absent  
19 the authority in the order of September 20th. This  
20 was done entirely without -- in our view.

21 Okay, I thought I was -- I thought I saw a  
22 question.

1                   Next, Judge Newman intends, as I  
2 mentioned, to litigate her rights in Article III  
3 Courts and will not do anything that may preclude her  
4 or prejudice her ability to do so.

5                   JUDGE PROST: Can I ask? That's like on  
6 page 15 or 16 of your submission. So is the point  
7 you are making that she is not going to comply with  
8 the Committee's request because, unless and until she  
9 gets all of her adjudications completed, to do  
10 otherwise would preclude her from --

11                   MR. DOLIN: I mean, in part, I also am not  
12 confident that she will ever comply with the request.  
13 As we have said before, she will not submit to this  
14 Committee's demands.

15                   JUDGE PROST: But on that point --

16                   MR. DOLIN: But on that point, certainly  
17 not until we get a final judgment on that. Certainly  
18 not before that.

19                   JUDGE PROST: And that would include --

20                   MR. DOLIN: That would include a seek and  
21 cert, if necessary.

22                   JUDGE PROST: And so your view would be

1 that the sanction, what we did in our order, we  
2 should have stayed or we should have not gone forward  
3 with that under our statute until all of these  
4 proceedings are concluded?

5 MR. DOLIN: At the very least, I think you  
6 should have stayed it until the JC&D heard it. This  
7 was entirely unprecedented.

8 JUDGE PROST: I didn't see you saying  
9 that.

10 MR. DOLIN: No, but since you're asking --  
11 and I think we made a submission. It was entirely  
12 unprecedented for a Judicial Council to suspend a  
13 judge prior to at least the administrative process  
14 running out.

15 JUDGE PROST: I hear what you are saying.  
16 I didn't see that argument. I thought the argument  
17 was that she should not have to comply until the  
18 judicial proceedings were done.

19 MR. DOLIN: Certainly she has colorable  
20 claims that she intends to press. We shall be filing  
21 our notice of appeal either today or tomorrow, and we  
22 will proceed in litigation in the D.C. Circuit.

1                   JUDGE PROST: Is there any legal  
2 authority? You cited a couple cases but I'm not sure  
3 I saw updates. Is it your position that we should  
4 not be allowed to go forward, or you are just saying  
5 generally we shouldn't proceed as a matter of  
6 collegiality or something? You're not saying there  
7 is a legal impediment to our proceeding while she  
8 is --

9                   MR. DOLIN: Well, I certainly am  
10 suggesting that suspending a judge from office,  
11 especially for a long period of time, is nothing else  
12 than self-impeachment which is constitutionally  
13 prohibited. Whether or not -- so as a general  
14 matter, right?

15                   JUDGE PROST: Right.

16                   MR. DOLIN: To the extent that the  
17 Committee wanted to show cause as to why Judge Newman  
18 is not complying, she will not comply at least until  
19 her Article III options are exhausted, because to do  
20 so would moot her case in Article III court which she  
21 believes and we believe is important for -- it's  
22 important not just for Judge Newman but for the

1 structural concerns about our entire system of  
2 government. So she certainly will not comply and  
3 moot out her case. And that's why, as I said at the  
4 end of our submission, no amount of sanctions will  
5 accomplish that goal.

6           So if the sanctions are punitive, then --  
7 and I'll get to that shortly. If the sanctions are  
8 punitive, then she has already been subject to the  
9 strict -- to the most stringent sanction in the  
10 history of the Republic. If the sanctions are meant  
11 to be coercive, they will not work.

12           Yes, Judge Taranto.

13           JUDGE TARANTO: On this last one, I just  
14 wanted to ask you, you draw an analogy to civil  
15 contempt and are citing cases in which you say that  
16 in some circumstances where it is clear that the  
17 object of coercive sanction won't work, the coercive  
18 sanction could come to an end and each of those is a  
19 case of incarceration, which this isn't. Do you have  
20 any cases that get closer to what's going on here  
21 which might, for example, be an individual refuses to  
22 take a medical examination which has been demanded

1 reasonably --

2 MR. DOLIN: We disagree.

3 JUDGE TARANTO: Right, but that's the  
4 premise that is independent of your civil contempt  
5 futility point. So assuming that there is a  
6 reasonable demand for medical examination for a  
7 disability to perform the functions of a job; that  
8 the individual's refusal can be deemed to make the  
9 demand futile and thereby restore the person to the  
10 performance of the job even in the face of, by  
11 assumption, the reasonable basis for doubting the  
12 ability to move forward?

13 MR. DOLIN: First off, this is not merely  
14 a job. This is a constitutional office, right?

15 JUDGE TARANTO: So is it obvious to you  
16 which way that cuts --

17 MR. DOLIN: Yes.

18 JUDGE TARANTO: So if it's a very  
19 important job would be, in your view, a reason to  
20 restore the person to it?

21 MR. DOLIN: I don't think it's about  
22 importance. I think it's about the fact that it's

1 not merely a job, it's a constitutional office. But  
2 I think to your point, obviously in private sector  
3 you can simply be fired for not complying. In the  
4 Army you could be subject to court-martial for  
5 refusing to follow lawful orders, et cetera.

6           So do I have an exact situation? No. But  
7 that just shows how unprecedented this case is.  
8 Again, I have -- and we had gone through this last  
9 year. There is not a single situation in the history  
10 of the Republic where a judge has been suspended from  
11 office, especially ad infinitum, that I could cite.  
12 The only case I was able to find where a judge had  
13 been wholly suspended was the case of Judge Porteous  
14 who was suspended for two years while -- number one,  
15 he didn't contest it, but number two was so that he  
16 could focus his attention on his then ongoing  
17 impeachment proceedings. And that is the only one I  
18 could find.

19           So to your question, is there an identical  
20 case that talks about restoration to the job? Of  
21 course not, because that doesn't come up.

22           JUDGE TARANTO: Has anything that you



1 cited outside the incarceration context come up?

2 MR. DOLIN: Respectfully, Judge Taranto, I  
3 think you're reading it too narrowly. It's not about  
4 whether or not somebody is incarcerated. The  
5 question is whether the coercive power of the court  
6 has lost its sting, so to say, whether it's  
7 incarceration or monetary penalties or whatever else,  
8 whether or not they will accomplish that goal.

9 For example, imagine if the Court said,  
10 look, you are going to be fined \$100 a day, doubled  
11 every other day. At some point when the person is  
12 bankrupted, right, they're not going to keep fining  
13 them.

14 JUDGE PROST: So how does our system work  
15 under the judicial statutes? If someone is required  
16 to do something or is compelled to do something,  
17 automatically, as long as they say I am never going  
18 to comply ever, ever, ever, then it doesn't work?

19 MR. DOLIN: No. The Judicial Council is  
20 certainly more than welcome to refer Judge Newman's  
21 misconduct, if it believes that's what it is, to  
22 Judicial Conference for initiation of impeachment

1 proceedings. That's certainly an option open to  
2 them.

3           If the Judicial Council thinks that Judge  
4 Newman's behavior is so egregious that the only  
5 option is either her going back on the bench or not  
6 going back on the bench and there is nothing in  
7 between, then the solution is to refer her to  
8 Judicial Conference which can then make a reference  
9 to the House.

10           JUDGE PROST: And the solution is  
11 necessary because she is saying that she will never  
12 comply under any circumstances.

13           MR. DOLIN: Correct. And in fact, that is  
14 what six Judicial Councils are doing. Just two days  
15 ago, the Ninth Circuit has released its report of its  
16 own investigation into a now former judge Joshua  
17 Kindred in Alaska who engaged in egregious conduct,  
18 including lying to the Chief Judge, the Special  
19 Committee, and the Judicial Council, in addition to  
20 sexual misconduct, et cetera. And what were the  
21 sanctions imposed on him? Public reprimand, asked  
22 him for voluntary resignation, and referral to

1 Judicial Conference for possible impeachment  
2 proceedings.

3 Compare Judge Kindred's misconduct to  
4 Judge Newman's misconduct, if that's what it is.  
5 Here, you have judge who is engaged in inappropriate  
6 law clerks, harassing law clerks, not disclosing the  
7 fact that he has ongoing sexual relations with an  
8 AUSA who is appearing before his court, lying, and  
9 the sanction is a reprimand or censure, I think, and  
10 a request for voluntary resignation.

11 Again, the Committee of course is free to  
12 ask Judge Newman for that as well.

13 CHIEF JUDGE MOORE: I know it's not  
14 terribly relevant to your point but I think that they  
15 found that. The AUSA never, ever appeared in front  
16 of this Court.

17 MR. DOLIN: No, I disagree. There were  
18 two AUSAs, one who was sending nude photographs to  
19 the judge, and then the law clerk who became an AUSA,  
20 and she didn't appear before the court.

21 CHIEF JUDGE MOORE: Okay.

22 MR. DOLIN: So, but again, you are right,

1 it's not terribly relevant to the point. But the  
2 point is egregious misconduct met with a censure,  
3 misconduct that -- even assuming Judge Taranto's  
4 question that this is a reasonable demand for a  
5 medical exam, and even assuming that this is -- you  
6 know, that this is quite bad. It's certainly not the  
7 worst misconduct in the history of the Republic.

8           And Judge Prost, to your question, how  
9 does this work? If you believe that this really  
10 undermines the entire Federal Judiciary, or at least  
11 this Court, the House is open to correct that and the  
12 Senate is open to correct that.

13           Our separation of powers are not meant to  
14 allow fellow judges to self-impeach even for terrible  
15 misconduct, even for bribery, as for example was the  
16 case -- or close to the case with Judge Porteous.

17           So that's -- you know, it may be  
18 cumbersome, but that's the point. That's the point  
19 of life tenure.

20           And on that point, what's also interesting  
21 and I think underappreciated is that were Judge  
22 Newman to submit to the medical exams and were the

1 medical exams to find that she is not competent --  
2 which she is. But were the medical exams to find  
3 that she is competent, what would be the outcome  
4 here? That neither the Committee nor the Council can  
5 suspend her, especially because presumably she  
6 wouldn't be competent because of senility, not  
7 because of some temporary event.

8           They still wouldn't be permitted to  
9 suspend her, unless she chooses to resign or retire,  
10 or the Committee managed to convince the House of  
11 Representatives to impeach her in part because,  
12 number one, they can't constitutionally do it; but,  
13 number two, because the Statute says suspension for  
14 time certain. Presumably senility doesn't get better  
15 with age, so there is no time certain there.

16           So the interesting part about it is taking  
17 the test or not taking the test doesn't change the  
18 outcome. Judge Newman is and will remain an active  
19 judge of this Court until she retires, dies, or is  
20 impeached.

21           So in some sense the kind of taking of  
22 this test is sort of beside the point. And last, on

1 that issue, the Committee has repeatedly declined to  
2 state that it will be even bound by the test results,  
3 a simple step that it might help us to determine  
4 things. But the Committee has never said, not once,  
5 that if the doctors give her the green light, she  
6 will be restored to the bench.

7           And so that -- again, that means that  
8 Judge Newman has no confidence that submitting to  
9 these tests will bring these proceedings to a speedy  
10 conclusion. And especially true given that Judge  
11 Newman's speed of writing, which hasn't changed in  
12 the years, is unlikely to change now because  
13 supposedly speed was key evidence of disability, and  
14 there's no reason to believe that Judge Newman will  
15 be any speedier even if she gets a green light from  
16 medical evaluation.

17           I think I have mostly covered additional  
18 sanctions. Let me just again point out that, again,  
19 comparing this to, for example, Judge Adams' case,  
20 his refusal to get tested was met with a six-month  
21 recommended suspension.

22           The first suspension that was recommended

1 was ultimately vacated by JC&D was because the  
2 Committee concluded that he's disabled. That was  
3 vacated because JC&D said there was no evidence of  
4 disability. They sent it back saying if he continues  
5 to be recalcitrant or refused testing, that may be a  
6 cause for its own sanction. The matter went back,  
7 Judge Adams refused, the Committee recommended a  
8 six-month suspension with no possibility of renewal.

9           Now, ultimately it was settled, supposedly  
10 he got better, whatever happened. But the point is,  
11 if you look at what was recommended and what would be  
12 commensurate: Recommended six months. Judge Newman  
13 has now been suspended for, by my count, about 16  
14 months, and suspension lasts until September which  
15 would get to about 18 or so. So it is just not  
16 comparable.

17           I have already talked about the case of  
18 Judge Kindred. And, so looking at any other  
19 situation where the machinery of judicial discipline  
20 was invoked, no case, no matter how egregious the  
21 misconduct, comes anywhere close to the sanctions  
22 imposed on Judge Newman.

1 I am happy to entertain any additional  
2 questions.

3 CHIEF JUDGE MOORE: I have one additional  
4 question. In your brief, you suggest that Judge  
5 Newman's treating physician and other medical  
6 professionals have not suggested that there is any  
7 need for a neuropsychological or a psychiatric exam.

8 MR. DOLIN: Correct.

9 CHIEF JUDGE MOORE: Does that include her  
10 cardiologist?

11 MR. DOLIN: None of her physicians have  
12 suggested any need for any additional -- or, any  
13 mental exams at all. The two tests that she took was  
14 essentially to placate this Committee.

15 CHIEF JUDGE MOORE: Does that include her  
16 pulmonologist?

17 MR. DOLIN: I don't know how much clearer  
18 I can say it. No physician that Judge Newman sees  
19 has recommended any mental competency examinations.

20 CHIEF JUDGE MOORE: How would you know?

21 MR. DOLIN: I am happy to submit an  
22 affidavit from Judge Newman to that effect. If the



1 word of an officer of the court is insufficient for  
2 this Committee, I am happy to submit an affidavit to  
3 that effect.

4 CHIEF JUDGE MOORE: We asked for her  
5 medical records. Wouldn't that answer that very  
6 question?

7 MR. DOLIN: It might. But for reasons  
8 stated, Judge Newman will not provide them. But I'm  
9 happy to submit an affidavit from Judge Newman  
10 personally that she was not recommended to undergo  
11 any medical exams. And upon seeing Dr. Rothstein and  
12 Dr. Carney -- now, the Committee might say that those  
13 are too cursory of a test. But those tests at the  
14 very least, if nothing else, they are screening  
15 tests. And presumably someone who does poorly on a  
16 screen test would be made a recommendation to, hey,  
17 maybe you should do something else, maybe CT scans,  
18 maybe further medical exams, whatever.

19 Neither Dr. Rothstein nor Dr. Carney nor  
20 any of Dr. Newman's treating physicians have ever  
21 suggested that she is in a position where a mental  
22 competency exam would be advisable. The only people

1 who suggested it are the members of this Committee,  
2 None of whom are physicians.

3 CHIEF JUDGE MOORE: How do we know whether  
4 those doctors have seen all of the evidence that was  
5 presented to this Committee, all of the evidence  
6 suggesting the reason for concern over mental  
7 fitness?

8 MR. DOLIN: I would imagine that the  
9 answer to that is those doctors are doctors and this  
10 Committee is not. And so those doctors would know,  
11 the doctors who see her on a regular basis.

12 CHIEF JUDGE MOORE: Mr. Dolin, wouldn't  
13 you think that a doctor ought to know the symptoms  
14 that exist in order to render a suggestion about what  
15 tests are necessary?

16 MR. DOLIN: I would. I would just  
17 disagree that what you, Judge Moore, classified as  
18 symptom is actually a symptom. I think doctors would  
19 know better what counts as a symptom.

20 Going back, for example, to last year's  
21 argument. Judge Prost asked me about syncope, that  
22 sick sinus syndrome which has evidence but has

1 consequence -- has consequence potential of  
2 confusion, tiredness, et cetera. True, if untreated.  
3 So just like, for example, diabetes would have that.  
4 And -- if untreated.

5           But, of course, Judge Newman's sick sinus  
6 syndrome is treated with a pacemaker for over a  
7 decade. There is no evidence that there is anything  
8 wrong with her pacemaker or how it functions, et  
9 cetera. Yes, Judge Newman takes medication, as I  
10 assume many of her colleagues do.

11           CHIEF JUDGE MOORE: There might be no  
12 evidence that there's anything wrong with her  
13 pacemaker, but there is an enormous amount of  
14 evidence in this record that Judge Newman is  
15 struggling with confusion and agitation and memory  
16 loss and lack of comprehension. And that is the  
17 unfortunate situation that we found when we  
18 investigated.

19           So how can we rely on her representation  
20 that she might make that none of her doctors have  
21 told her to do anything when she maybe didn't tell  
22 her doctors all of that?

1                   MR. DOLIN: But are you suggesting that  
2 Judge Newman would be lying to this Committee?

3                   CHIEF JUDGE MOORE: No, I did not suggest  
4 that at all. She may well be very truthful when she  
5 says that. But if her doctors aren't aware of the  
6 facts that we are aware of, how can they make an  
7 assessment of what is necessary? I am not suggesting  
8 she would lie. Let me be very clear about that.

9                   MR. DOLIN: Dr. Carney --

10                  CHIEF JUDGE MOORE: I want to be very  
11 clear. I have tremendous respect for her. I am the  
12 one that said she was the heroine of the patent  
13 system. I wrote an article about how much she has  
14 meant to this Court.

15                  So I just want to be really clear about  
16 that. I would never suggest that she lies.

17                  MR. DOLIN: With respect to Judge --

18                  CHIEF JUDGE MOORE: Now, my question was  
19 that I am worried that those doctors wouldn't have  
20 the information they need to be able to make an  
21 opinion that would be valid if they weren't provided  
22 the same information we were given.

1                   MR. DOLIN: I am going to leave aside the  
2 question about respect for Judge Newman. Let me  
3 answer it twofold.

4                   Number one, Dr. Carney looked at the  
5 evidence submitted -- at least with the one that was  
6 publicly available -- about her supposed slowness,  
7 about her confusion, et cetera.

8                   CHIEF JUDGE MOORE: Who?

9                   MR. DOLIN: Dr. Carney.

10                  CHIEF JUDGE MOORE: I'm not --

11                  MR. DOLIN: Well, but wait. Wait a  
12 second.

13                  CHIEF JUDGE MOORE: I'm talking about her  
14 treating physicians.

15                  MR. DOLIN: But wait a second. What I  
16 wrote in my response is that none of the doctors who  
17 have seen Judge Newman have suggested she is in need  
18 of a mental evaluation.

19                  JUDGE PROST: And I believe Chief Judge  
20 Moore's question was, are they aware of the record at  
21 least that we have developed in investigation that  
22 might inform their decision about whether she needs

1 further attention?

2                   MR. DOLIN: So -- and I'm answering this.  
3 Number one, some doctors are explicitly aware because  
4 they have read publicly available orders. Number  
5 two, other doctors very well may be aware because  
6 things have been in the public domain. And number  
7 three, again, respectfully, doctors would know what  
8 symptoms to look for.

9                   Whether or not this Committee is concerned  
10 about Judge Newman's speed is relevant to doctors'  
11 decisions whether or not Judge Newman ought to seek  
12 further exams. That's not for this Committee to  
13 second-guess.

14                   But, tell you what. If this Committee  
15 wishes for Judge Newman's treating physicians to read  
16 through the thousand-page record and then render  
17 their opinion as to whether or not a mental health  
18 exam is warranted, I can make that happen.

19                   But the point is that no one except  
20 members of this Committee -- not people who see Judge  
21 Newman socially, not people who have seen Judge  
22 Newman professionally, not people who have been on

1 various panels with Judge Newman, not the Supreme  
2 Court that affirmed her opinion -- thought that Judge  
3 Newman is in need of a mental competency exam. It's  
4 only this Committee and the physician who has never  
5 seen or evaluated or talked to Judge Newman.

6           So you have medical evidence on one hand  
7 and complaints by disgruntled staff on the other  
8 hand. Respectfully, I think medical evidence  
9 warrants more weight.

10           But -- again, I am happy to entertain more  
11 questions, but I will just say that, once again that  
12 as a punishment suspension is already excessive. It  
13 is more so than any other judge was suspended to.  
14 And as a coercive tool, it will simply not work.  
15 Judge Newman will not submit to these Committees'  
16 baseless demands.

17           All of that having been said, there are  
18 still opportunities to resolve this, as we have  
19 suggested on multiple occasions. And if the  
20 Committee is truly interested in figuring out is  
21 Judge Newman able or unable to perform this function,  
22 rather than just keeping it to itself, there is an

1 opportunity to get a neutral decisionmaker involved  
2 and actually resolve it.

3           So there are off-ramps here, but Judge  
4 Newman will not submit to a my way or highway  
5 approach. And I understand it may be frustrating to  
6 the Committee, but Judge Newman is an Article III  
7 judge nominated, confirmed, and appointed by the  
8 President. She gets to hold her office on good  
9 behavior, and she intends to do so.

10           CHIEF JUDGE MOORE: Is there anything else  
11 you would like the Committee to hear?

12           MR. DOLIN: Not unless the Committee has  
13 any further questions.

14           CHIEF JUDGE MOORE: All right. Thank you.  
15 Thank you for your argument.

16           (Whereupon, at 3:58 p.m., the instant  
17 proceedings adjourned.)

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## 1 CERTIFICATE OF REPORTER

2

3 UNITED STATES OF AMERICA ) ss:

4 DISTRICT OF COLUMBIA )

5 I, Desirae S. Jura, RPR, the officer before whom  
6 the foregoing proceedings were taken, do hereby  
7 certify that the foregoing transcript is a true and  
8 correct record of the proceedings; that said  
9 proceedings were taken by me stenographically to the  
10 best of my ability and thereafter reduced to  
11 typewriting under my supervision; and that I am  
12 neither counsel for, related to, nor employed by any  
13 parties to this case and have no interest, financial  
14 or otherwise, in its outcome.

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22 My commission expires: 1/31/2025

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Notary Public in and for

The District of Columbia