No. FC-23-90015

In the Judicial Council of the United States Court of Appeals for the Federal Circuit

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In re Complaint No. 23-90015
(Complaint Against Circuit Judge Pauline Newman)

RESPONSE TO THE SPECIAL COMMITTEE'S ORDERS OF FEBRUARY 26, 2025 AND JUNE 6, 2025

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INTRODUCTION[1]

Judge Newman has now been suspended from her judicial duties and judicial office for over two years.[2] This suspension has already been the longest in the history of the country, and it has now exceeded even *proposed* sanctions which were not acted upon. *See In re Complaint of Judicial Misconduct*, No. 17-01 (C.C.D. Aug. 14, 2017)(vacating proposed two-year suspension). The total suspension from hearing cases for someone not in the midst of an impeachment proceeding continues to be *entirely unprecedented* and inappropriate. This ongoing abuse of the judiciary's self-policing authority is attempting an end-run around the constitutionally-prescribed procedures for removing an Article III judge. Suspending Judge Newman for an unjustifiable *third* year would be yet another clear indication that this Committee and the Judicial Council fully intend for the suspension to be indefinite and permanent in duration—an ersatz impeachment—and are, in fact, waiting for Judge Newman to die instead of resolving this case.

The Special Committee and the Judicial Council are now presented with yet another opportunity to bring this matter to a close *one way or another*—an opportunity it should avail itself of. The Committee can do one of four things. In deciding which route to take, the

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[1] Pursuant to Rule 23(b)(7) of Rules for Judicial-Conduct and Judicial-Disability Proceedings, Judge Newman requests and consents to the prompt release of this submission. Judge Newman reminds the Chief Judge that the Commentary to Rule 23 states that "[o]nce the subject judge has consented to the disclosure of confidential materials related to a complaint, the chief judge ordinarily will refuse consent *only* to the extent necessary to protect the confidentiality interests of the complainant or of witnesses." R. 23. Comm. (emphasis added). Judge Newman does **not** consent to the release of her medical records.

[2] The suspension began with the April 2023 sitting and was originally presented as a suspension under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364. After Judge Newman filed suit, *see Newman v. Moore*, No. 23-cv-01334 (D.D.C.), *appeal pending* No. 24-5173 (D.C. Cir.), the suspension was reclassified as having been entered under a different provision of law. *See* Judicial Council Order of June 5, 2023 (relying on 28 U.S.C. § 332(d)(1)).

Committee[3] should bear in mind that it is the *Committee* rather than Judge Newman that bears the burden of proof on all issues. And though "[n]either the Judicial Conduct and Disability Act, nor the Judicial–Conduct Rules, nor the Code of Conduct expressly indicates what burden of proof a judicial council should apply in its factfinding in a judicial misconduct proceeding," the D.C. Circuit has strongly suggested that, by analogy to attorney discipline, the standard should be that of "clear and convincing evidence." *In re Charges of Jud. Misconduct*, 769 F.3d 762, 766 (D.C. Cir. 2014). For the reasons explained below, there is no set of circumstances under which this Committee could possibly meet such a standard in this case.[4]

First, the Committee can, and ought to, credit the evaluations of three independent medical providers—Drs. Ted L. Rothstein, Regina M. Carney, and Aaron G. Filler—each of whom examined Judge Newman and rendered an opinion that she is fit for duty. In combination, and especially when viewed in light of the fact that none of Judge Newman's medical providers (not the general practitioner, not the pulmonologist, not the cardiologist, not any of the doctors who saw her during her hospital admissions, etc.) have expressed any concerns about Judge Newman's mental fitness or abilities, the opinions of these treating physicians provides adequate information at a high level of confidence, that Judge Newman is not disabled.

[3] Because this document is being submitted to the Special Committee, for the sake of clarity and consistency, it will (unless quoting or referring to other documents) refer throughout to the Committee, even though Judge Newman recognizes that the ultimate decision rests with the Judicial Council.

[4] Indeed, the Committee is unlikely to meet even a lesser preponderance of the evidence standard.

Second, the Committee, now that it has opinions from its own experts—none of whom opined she is disabled—as well as medical records that those experts deemed to be relevant to the inquiry into Judge Newman's mental status, could conclude the opposite (over Judge Newman's disagreement and objections and despite such conclusion not meeting the Committee's burden of proof), to wit, that Judge Newman *is* disabled and is unable to carry out the duties of an active judge of the United States Court of Appeals for the Federal Circuit. Of course, such a conclusion would *not* permit the Committee to remove Judge Newman from the bench, see 28 U.S.C. § 354(a)(3)(A), as the only consequence of such a finding is certification of the disability to the President of the United States, who can then choose to appoint a supernumerary judge to the court, leaving Judge Newman to "for purpose of precedence … be treated as junior in commission to the other judges of the … court," 28 U.S.C. § 372(b).[5]

Third, the Committee can (and to the extent it rejects the first option, should) conclude that an impasse has been reached making the complaint "not amenable to resolution by the judicial council," and "promptly certify [the] complaint and a record of any associated proceedings, to the Judicial Conference of the United States." 28 U.S.C. § 354(b)(2)(B). In doing so, the Committee can also certify either that Judge Newman's supposed disability or

[5] The Committee can also request that Judge Newman voluntarily retire, *see* 28 U.S.C. § 354(a)(2)(B)(ii), but as she has previously explained, given her lack of trust in the objectivity of the Committee's members, she has no intention of honoring such a request. Were this matter transferred to a neutral tribunal, Judge Newman would remain open to a request for retirement from that body.

alleged refusal to cooperate "constitute[s] one or more grounds for impeachment under article II of the Constitution." *Id.* § 354(b)(2)(A).[6]

Finally, to the extent that the Committee (however erroneously) believes that it absolutely, under any circumstances, cannot reach a conclusion as to Judge Newman's mental fitness absent a neuropsychological examination, it should transfer this matter to another circuit's judicial council. *See* R. 26. As Committee's own witnesses testified during depositions, *see infra*, a proper and complete neuropsychological evaluation must take into account reliable information from "collateral sources," such as family and co-workers. Because Judge Newman does not have any family members living with her, the only remaining reputable "collateral sources" are Judge Newman's co-workers, which includes members of the Special Committee and the rest of the Judicial Council—first and foremost Chief Judge Kimberly Moore, who "identified" the complaint in this matter. Obviously, Committee and Council members cannot be both "collateral sources," (*i.e.*, witnesses) and adjudicators, so transfer is mandatory. The bottom line is that the Committee has enough information in front of it to resolve this matter. Refusing to conclude this matter will only confirm that the Committee's and Council's sole interest is to keep Judge Newman off the bench until her death.

The present response will discuss each of the permissible avenues to resolve this matter in turn. Prior to doing so, however, Judge Newman must observe that the currently operable

[6] Judge Newman would, of course, disagree with such a characterization, and defend herself accordingly. However, Judge Newman's agreement is not necessary for the Council to make its own conclusions or referrals, and Judge Newman does not dispute that the Council has statutory and constitutional authority to act in the manner described.

suspension order suffers from several procedural flaws. First, the September 6, 2024 Judicial Council Order failed to comply with Rule 20(f), which requires that such an order "be accompanied by a memorandum setting forth the factual determinations on which it is based and the reasons for the council action," "[u]nless the judicial council finds that extraordinary reasons would make it contrary to the interests of justice." The Order in question was neither accompanied by such a memorandum nor contained a finding of any "extraordinary reasons."

Second, the Sept. 6 Order failed to specify, as is required, that the initial complaint was initiated under Rule 5, and more importantly failed, as is also required, to advise Judge Newman of her "right to review of the judicial council's decision as provided in Rule 21(b)."

Finally, and perhaps most importantly, because this process began under Rule 5, the Judicial Council was required to: a) transmit the matter to the Judicial Conduct & Disability Committee of the Judicial Conference (JC&D), and b) that Committee was obligated to review such an order. See R. 20(f) ("If the complaint was identified under Rule 5 or filed by its subject judge, the judicial council must transmit the order and memoranda incorporated by reference in the order to the Committee on Judicial Conduct and Disability for review in accordance with Rule 21."). While it appears from JC&D's order of October 3, 2024, that such a transmission was made, the JC&D has never conducted a review of the Judicial Council's Sept. 6 Order as it was obligated to do. See *In re Complaint of Judicial Misconduct*, No. 24-04 at 1-2 (C.C.D. Aug. 22, 2024) (noting that JC&D review is "*required* by Rule 20(f)") (emphasis added). Thus, JC&D has never had an opportunity to consider either legal or factual objections to that Order and thus never affirmed it. It is therefore highly doubtful whether the Committee even

has authority to extend a Rule 5-prompted Order that was not approved by the JC&D. Accordingly, these proceedings, to the extent they consider anything other than Judge Newman's Motion for Reconsideration, are improper.

I. THE WEIGHT OF THE EVIDENCE, AS AUGMENTED BY THE REPORT OF DR. AARON G. FILLER, SHOWS THAT JUDGE NEWMAN IS NOT DISABLED

As the Committee has said on numerous occasions, its key concern and focus of investigation is whether Judge Newman "suffer[s] from a mental disability that impairs her ability to fulfill the duties of her office." July 2024 Committee Report & Recommendation at 1. To reach that decision, the Committee has demanded that Judge Newman submit herself to neuropsychological testing by an expert of the Committee's choosing, on the basis that such testing is supposedly the "gold standard" to answer the question before the Committee. *See* DeRight Rep. at 10. Without conceding that neuropsychological testing is either an objective measure of cognitive abilities or that its results are truly a "gold standard," Judge Newman submits that even in the absence of the supposedly "gold standard" evidence, the Committee has a wealth of evidence as to Judge Newman's state of mental health (all of which supports the finding that she is fully capable of doing her job) and therefore can fulfill its "statutory duty." July 31, 2023 Report & Recommendation (2023 R&R) at 61.

A. Evaluations by Drs. Rothstein, Carney and Filler, Either Alone or in Combination, Show that Judge Newman Is Mentally Fit

1. Dr. Rothstein

As the Committee is well aware, Judge Newman has been examined by three separate physicians of three separate subspecialties—Dr. Ted Rothstein, a neurologist; Dr. Regina

Carney, a psychiatrist, and Dr. Aaron Filler, a neurosurgeon. Each examination was independent of each other, and none of the physicians is familiar with any other one. All three physicians concluded that Judge Newman is "unusually cognitively intact." Regina M. Carney, M.D., Report of Independent Medical Examination of Pauline Newman at 5; Aaron G. Filler, MD, PhD, JD, Expert Report at 13. Drs. Rothstein and Carney testified at deposition that this conclusion was not a "close call," Carney Tr. 256:9-257:2; Rothstein Tr. 125:12-126:4 and Dr. Filler's expert report is in the same vein. Filler Rep. at 41 ("[T]here is no medical, neurological, or cognitive basis … for doubt about Judge Newman's ability 'to discharge the duties of her office.'" (quoting Special Committee Order of May 16, 2023 at 1).

The Committee and the Council have previously criticized Dr. Rothstein's and Dr. Carney's evaluations, going so far as misconstruing them and claiming that each took just minutes to conduct. *See*, *e.g.*, Sept. 20, 2023 Order at 53-54. During their respective depositions, Dr. Rothstein and Dr. Carney have addressed and explained their methodology and corrected these false claims.

With respect to Dr. Rothstein, the Committee had three basic objections to accepting his evaluation. First, the Committee viewed him as insufficiently independent. This objection was based on the Committee's belief that Dr. Rothstein has had a long-standing friendship with Judge Newman and thus could be biased in his opinions. July 24, 2024 Report and Recommendation (2024 R&R) at 14. Second, the Committee viewed the evaluation performed by Dr. Rothstein as superficial and insufficient. *Id.* at 13. And third, the Committee objected to Dr. Rothstein's scoring of the neurocognitive screening test—the Montreal

Cognitive Assessment (MoCA) was allegedly incorrect because Dr. Rothstein gave Judge Newman credit for the clock-drawing portion of the test despite the fact that Judge Newman was unable (due to having a cast on her hand) to actually draw the clock. 2023 R&R at 99-103. Dr. Rothstein's deposition testimony sufficiently addresses all these concerns.

With respect to the first concern, Dr. Rothstein testified that while he has known Judge Newman socially for decades, their relationship could not be described as one of close friendship, and that he had not seen Judge Newman for many years. Rothstein Tr. 13:8-9. He testified that to the best of his recollection, Judge Newman has never visited his house (at least while he was present) for dinner or other social occasions, nor did he visit hers. *Id.* at 42:8-18. All their interactions occurred in Washington, D.C.'s social circles and revolved around the fact that Dr. Rothstein's wife is also a member of the federal judiciary, and the fact that Dr. Rothstein was a consultant to the Einstein Institute for Science, Health & the Courts ("EINSHAC"). *Id.* at 41:3-42:4; 43:1-8; 47:2-8; 131:21-132:3. This superficial social acquaintance cannot possibly provide sufficient ground to suspect that Dr. Rothstein would color his opinion of Judge Newman's abilities. *See id.* 132:12-133:6. Had he wished to put his thumb on the scale to aid Judge Newman, he could have nudged her toward the right answers on the word memorization portion of the test or have otherwise helped her achieve a better score on the MoCA. Yet, Dr. Rothstein provided a full and honest evaluation of Judge Newman's performance.

Furthermore, Dr. Rothstein testified, under oath, that his examination of Judge Newman did not deviate from any other examination of any other patient that has walked into

his office during his decades of practice. *Id.* at 56:3-20; 132:12-133:6. There is no basis to doubt that testimony.[7] If anything, Dr. Rothstein's prior (albeit limited) interactions with Judge Newman give him a *better* perspective on the question of whether her current mental state unfavorably contrasts with her pre-existing mental state. *See id.* at 131:17-132:6. Indeed, two of the Committee's own experts testified that in conducting a fitness for duty evaluation, it is important, yet quite difficult, to establish the pre-morbid baseline.[8] *See* DeRight Tr. 27:5-10; Noble Tr. 273:1-11. The difficulty, according to the Committee's own experts, stems from the lack of familiarity with the patient prior to that patient coming to the office for the evaluation. *Id.* And while the Committee's experts testified that there are ways to "approximate" a patient's pre-morbid condition, *id.*, it would seem self-evident that someone who has actually *observed* and thus has data on the patient's pre-morbid state would be in a better position than other evaluators who possess only tools that would merely "approximate" a patient's pre-morbid condition.[9]

The Committee's concern that Dr. Rothstein's evaluation was superficial (and concomitant concern that he did not have access to Judge Newman's medical records) are also

[7] Dr. Jonathan DeRight did opine that Dr. Rothstein's social acquaintance with Judge Newman biases a neutral evaluation, DeRight Tr. 163:12-13; 165:21-166:2, but Dr. DeRight's opinion is merely his own, and he provided no support for that position.

[8] To be clear, Judge Newman does not concede that her current mental condition meets any clinical definition of "morbidity." The terminology is being used simply for the sake of clarity and conciseness.

[9] Indeed, Dr. Noble testified that "the *main challenge* of neuropsychology is [that the evaluator has] never met this p[atient] before." Noble Tr. 273:2-4 (emphasis added). This challenge is ameliorated when someone previously familiar with the patient performs the evaluation.

disproved by Dr. Rothstein's deposition testimony. Dr. Rothstein testified that he spent about an hour with Judge Newman and reviewed her medical records prior to doing so.[10] Rothstein Tr. 28:3-14; 62:10-63:12. This is entirely consistent with the Committee's own estimate of how long a neurological evaluation would last. *See, e.g.*, May 16, 2023 Order at 22 (noting that an examination by a neurologist "should last 30-45 minutes."). Dr. Rothstein further testified that prior to the examination he reviewed all medical records available through the MyChart system—a system that allows access to patients' data from multiple providers. Rothstein Tr. 53:12-54:4. According to Dr. Rothstein, nothing in that record review raised any concerns about Judge Newman's mental status. Rothstein Tr. 70:14-17. Thus, Dr. Rothstein's evaluation was not at all superficial; instead, it was fully in line with the evaluation that the Committee requested Judge Newman undergo.

The biggest criticism that the Committee has previously made against Dr. Rothstein (and one repeated by the Committee's experts) is Dr. Rothstein's allegedly improper scoring of the MoCA. 2023 R&R at 99-103. As the Committee is aware (and as the MoCA instructions direct) the clock-drawing test consists of three components—drawing a circle (1 point), putting the right numbers and in correct order on the face of the clock (1 point), and drawing and placing the clock hands at the correct time (1 point). According to the Committee

[10] Unlike other evaluators, Dr. Rothstein did not familiarize himself with various affidavits of Federal Circuit employees for the simple reason that these affidavits had not been publicly released at the time of the evaluation. Although Judge Newman and her counsel had access to these unredacted documents, given the various (entirely unjustified) threats emanating from this Committee regarding the confidentiality of the proceedings, neither Judge Newman nor her counsel thought it appropriate to share the documents with Dr. Rothstein. Nevertheless, Dr. Rothstein was aware of the substance of the allegations against Judge Newman.

and its experts, because Judge Newman could not physically draw the clock, that portion of the test should not have been scored at all. *See, e.g.*, DeRight Rep. at 26-27; Noble Rep. 5-6.

But as Dr. Rothstein explained, problems with clock drawing proceed in stages. That is, a person first loses the ability to place the hands of the clock correctly, then, as mental troubles progress, loses the ability to place the numbers within the circle, and finally becomes unable to draw anything resembling the clock at all. Rothstein Tr. 80:5-20. Dr. Rothstein testified that never in his decades of practice has he seen a person who was able to place the hands of the clock correctly be unable either to place the numbers correctly or draw a circle. *Id.* This assertion was never contradicted by any of the Committee's own experts, even as they questioned the propriety of using this information to assign a score to the clock-drawing portion of the MoCA test.

Relying on his experience and the uncontradicted understanding of the stages of cognitive decline, Dr. Rothstein asked Judge Newman where she would place the hands of the clock to indicate the time of 3:45. *Id.* Because Judge Newman answered correctly she "would put the minute hand on the nine and the hour hand on the three," *id.* at 80:9-11. Dr. Rothstein concluded that she would have had no problem drawing the clock had she been able to physically do so. *Id.* at 80:18-81:2. It is for this reason that Dr. Rothstein gave Judge Newman full credit for this portion of the MoCA, and it is for this reason that Judge Newman's score places her comfortably in the "normal" range of the results. This, of course, is further confirmed by Judge Newman's performance on the Modified Mini-Mental State (3-MS) examination administered by Dr. Carney, where Judge Newman was able to draw, without a

problem, interlocking pentagons. Thus, the weight of the evidence strongly supports an inference that had Judge Newman not had a fractured wrist and been wearing a cast, she would have been able to easily complete that portion of the MoCA, which requires handwriting, and would have received full scores for those aspects of the exam.

The Committee and its experts also paid inordinate attention to the fact that on the MoCA, Judge Newman was able to recall only 1 word out of 5 during the delayed recall portion of the test. According to the Committee, this was particularly concerning because in her role as a federal judge, Judge Newman would need to have a strong memory. This, of course, is a fair and understandable concern as far as it goes. *See* Sept. 20 Order at 55. And, had Judge Newman actually demonstrated memory problems, this might raise red flags. However, as Dr. Rothstein testified, when he spoke to Judge Newman "about the results of MoCA, [Judge Newman] volunteered she hadn't been paying that much attention; that had she known how important it was in terms of her score, she would've developed a mnemonic and been able to be more accurate in her response." Rothstein Tr. 125:1-6. To be sure, one could view this statement as self-serving. However, Judge Newman's inattentiveness explanation is confirmed by the fact that several months later, when tested by Dr. Carney, Judge Newman had no problem with word recall. Nor did Judge Newman have any problem with recall during Dr. Filler's examination. Thus, Judge Newman's explanation for her poor performance on the word recall portion of the MoCA fits perfectly with subsequent history and testing.

In summary, Dr. Rothstein's deposition testimony further confirms his original conclusion that Judge Newman has "cognitive function sufficient to continue her participation in her court's proceedings."

2. Dr. Carney

The Committee's experts do not appear to have taken issue with Dr. Carney's methodology and have not (unlike with Dr. Rothstein) criticized her administration of either the 3-MS test, or the rest of her examination.[11] Rather, the Committee's experts simply state that Dr. Carney's examination is insufficient to "definitive[ly] and comprehensive[ly]" rule out "possible cognitive decline." DeRight Rep. at 28, 31.

These criticisms, however, cannot, especially in light of the Committee's burden of proof, carry the day. As an initial matter, it is irrelevant whether Judge Newman suffers from cognitive *decline*. What matters is whether her cognitive condition is such that she can carry out her duties as an active judge on the United States Court of Appeals for the Federal Circuit. To illustrate, if it takes 100 points on some hypothetical scale to meet the standard for a competent federal judge, and Judge Newman scored 150 points (or even 110 points), she would meet the relevant standard, *even if* the 150-point score represented a decline from her

[11] Dr. Noble's initial report stated that "Dr. Carney['s report] made no mention of [various affidavits] which include critically important and revealing information." Noble Rep. at 10. While the affidavits are not explicitly mentioned or described in detail, Dr. Carney's report does state (as Dr. Noble acknowledges) that she review[ed] the "publicly available proceedings." Carney Rep. at 1-2. Dr. Carney also testified to having read through and considered all of the affidavits. Carney Tr. 27:14-17; 76:22-78:2.

prior score of 200 points.[12] Thus, to the extent that the criticism of Dr. Carney's examination focuses on its being too coarse to capture early-stage cognitive *decline*, it misses the mark and does not go to the issue that is before this Committee.

Second, the Committee's own experts admit that even the proposed neuropsychological testing may not be able to "definitive[ly] and comprehensive[ly]" rule anything out. For example, the Committee's chosen neuropsychologist, Dr. Jonathan DeRight, testified that not only would the selection of tests be different between different neuropsychologists, *see* DeRight Tr. 25:4-5; *see also* Noble Tr. 271:13-15, but that even given the same scores on the chosen tests, each neuropsychologist may well come to a different conclusion about the patient's fitness for duty or lack thereof, DeRight Tr. 29:8-17. *See also* Noble Tr. 271:13-275:19. Judge Newman, of course, does not dispute that more and more testing would produce more and more information. *See, e.g.*, Rothstein Tr. 113:9-10 ("[I]t's always helpful to have a larger body of information."); Carney Tr. 110:3 ("Of course I'd take any information.").

And such additional information may (or may not) be helpful. But it does not follow from these concessions that the absence of this additional information precludes one from reaching an informed conclusion as to Judge Newman's condition. Indeed, Dr. Carney testified that she "had collected enough information from Judge Newman, and [Judge

[12] That would remain the case even if Judge Newman were the lowest performing judge among her colleagues. After all, in every group someone always has to be the "weakest link." What matters though is not whether Judge Newman is better or worse than her colleagues, or for that matter, the prior version of herself, but whether she is competent enough to continue with her duties.

Newman] had offered information that was *far in excess* of what I would typically be critically examining for evidence of cognitive impairment." Carney Tr. 256:17-20. According to Dr. Carney, Judge Newman's case "was not a close call." *Id.* 256:15.

Two additional items with respect to Dr. Carney's examination are worth noting here. First, it should be emphasized that, contrary to the Committee's prior characterization, Dr. Carney did significantly more than administer an "eleven-minute" test.[13] As was already evident in her initial report, and as confirmed during her deposition, Dr. Carney spent about three hours with Judge Newman. Carney Rep. at 1; Carney Tr. 50:14-16. As Dr. Carney testified, that is more than she usually spends with a patient in clinical practice and instead approximates significantly more involved and in-depth evaluations done for the purposes of research. Carney Tr. 255:20-256:8. Second (and related to the previous point), the 3-MS test administered by Dr. Carney, while still being mostly a screening tool, provides a more comprehensive and better evaluation than other screening tests. Carney Tr. 174:16; Noble Tr. 24:19-21. Indeed, the Committee's own neurologist, Dr. James M. Noble, testified that it is longer than the usual "in-office screening tool." Noble Tr. 186:22-187:1. Thus, while 3-MS is, concededly, shorter and more coarse than a full neuropsychological battery of tests, it provides sufficient basis for the Committee to make an informed judgment about Judge

[13] In fact, the 3-MS is not an "eleven-minute" test at all. As Dr. Carney previously explained, and as Dr. Noble confirmed in his deposition, "[t]ypically [the 3-MS] takes longer, 20 to 30 minutes." Noble Tr. 156:13-14. That Judge Newman completed it faster than is typical is an indication of her robust cognitive abilities, rather than lack of robustness in the test itself. And, again, Dr. Carney administered the test as onepart of a three-hour clinical examination.

Newman's mental fitness—especially when combined with the wealth of other information presently before the Committee, and taking into account the burden of proof.

Finally, Dr. Carney's deposition is noteworthy for her explanation as to why she believed that the affidavits so heavily relied on by the Committee (and its experts) cannot bear the weight assigned to them. As has already been noted in prior submissions, most of the events described in the affidavits took place *after* the Committee had launched its (unwarranted) investigation and *after* Judge Newman was (improperly suspended) from hearing cases. Dr. Carney's opinion that the launch of the investigation into Judge Newman, together with the hostility displayed to her by the Chief Judge (or at least what was perceived as hostility), resulted in "a stressful situation," Carney Tr. 238:7, should be uncontroversial. The observation that "stress can impair our emotional responses to things," and that the "ability to access memory is clearly impaired by stress," *id.* at 238:8-10, should be equally uncontroversial. Thus, most of the episodes described in the affidavits relied on by the Committee are at best "understood [as] a very stress -- stressful response, but not in -- not a cognitive decline. Not a clinical condition. More of an emotional response." *Id.* at 239:4-6. This understanding of Judge Newman's response is bolstered by the fact that as the impact of initial stress has subsided, there have been no further reports of any similar episodes either within the Court or outside of it. Additionally, as Dr. Carney testified, when there are problems indicative of cognitive decline, rather than reaction to stress, they "impact[] different areas," whereas Judge Newman's reported issues were "all related to job performance, and specifically things with the computer." *Id.* at 240:1-4. Once viewed through the appropriate

lens, the affidavits (and events described therein) become much less indicative of any problem that would impact Judge Newman's ability to continue with the duties of the office constitutionally entrusted to her.

3. Dr. Filler

Dr. Filler's examination and report—the submission that prompted Judge Newman's Motion for Reconsideration—only further confirms prior findings. First and foremost, it is important to emphasize that Dr. Filler's evaluation consisted of more than just the Perfusion Computer Tomography scan (PCT) of Judge Newman's brain. Rather, Dr. Filler conducted a comprehensive examination. First, he performed a general physical examination. Filler Rep. at 28. Second, Dr. Filler concluded a full neurological examination of Judge Newman. *Id.* at 28-31. There were no abnormalities on that examination (which is fully consistent with the examination performed by Dr. Rothstein).[14] Third, Dr. Filler performed a targeted examination of Judge Newman's memory. *Id.* at 36-40.

Specifically, Dr. Filler provided Judge Newman with information on several scientific matters to see, *inter alia*, whether Judge Newman could recall the information provided, explain it, and then apply it. In many ways, this is no different than a "story test"—something that

[14] Drs. Noble and DeRight faulted Dr. Filler's neurological examination due to his failure to include a cognitive screening test. This criticism is somewhat baffling since both Dr. Noble and Dr. DeRight stated that even a perfect performance on such a test would have made no difference to what they believe are appropriate next steps. In any event, the Dr. Filler's entire evaluation was already unnecessary and not something that would be done in ordinary practice because in light of evaluations by Drs. Rothstein and Carney, as well as any lack of concern by Judge Newman's treating physicians, there was no objective need for yet another test. That Judge Newman submitted to yet another evaluation shows that she went above and beyond anything reasonably or medically called for simply to satisfy this Committee.

both Dr. Noble and Dr. DeRight stated would be part of a neuropsychological battery. *See* Noble 261:3-262:3; DeRight Tr. 26:9-10. As Drs. Noble and DeRight explained, a "story test" is where a story is "read to [the patient], and then they recount back." Noble Tr. 261:4-6. This is precisely the type of evaluation that was part of Dr. Filler's analysis. Although Dr. Filler's examination did not include a numerical score for Judge Newman's story recall performance, as would be the case for a standardized test such as the Craft Story Recall test, *see, e.g.*, NACC, *Instructions for the T-cog Neuropsychological Battery*, 6-9, 16-18, https://tinyurl.com/32a7t7vd, this portion of Dr. Filler's examination tested the exact same components of Judge Newman's cognitive abilities as would any other "story test." Since, according to Dr. DeRight, scores obtained on neuropsychological examinations are not ultimately determinative, and the conclusion as to one's fitness for duty must rely on the medical professional's "clinical judgment," DeRight Tr. 29:13-17, there is no reason not to credit Dr. Filler's "clinical judgment" as to Judge Newman's memory.

Furthermore, unlike the Craft Story Recall test, which merely asks the patient to repeat the story back to the examiner but neither requires nor tests for the *understanding* of the content of the story, NACC, *supra*, Dr. Filler's examination required Judge Newman not merely to repeat back the information relayed to her, but to show understanding of complex scientific technology, and then to apply that understanding to her knowledge of patent law. Dr. Filler, being not only a physician and a scientist, but also an attorney, is in a unique position to evaluate the fluency and coherence of these responses. No standardized test would be able to capture the presence or absence of these abilities—abilities that go to the very core of her

judicial duties as a Federal Circuit judge.[15] The results of this portion of the examination are also fully consistent with what was observed by Dr. Carney. As Dr. Carney testified during her deposition, Judge Newman "was able to remember a very recent scientific advance," Carney Tr. 238:22-239:1, and "pull up [from her memory] developing scientific information that was very, very recent," *id.* 238:11-13. The congruence between what Dr. Carney and Dr. Filler report is striking. This congruence bolsters the conclusion that Judge Newman's cognition is fully intact.

The above conclusion is also bolstered by the PCT imaging conducted by the George Washington Hospital and evaluated by Dr. Filler. Despite the criticism leveled at this portion of the evaluation by the Committee's experts, brain imaging's usefulness to diagnose cognitive problems is acknowledged by scientists at Harvard and Duke universities, and even the popular media. *See* Ethan T. Whitman, *et al.*, *DunedinPACNI Estimates the Longitudinal Pace of Aging From a Single Brain Image to Track Health and Disease*, Nature Aging (July 1, 2025), https://tinyurl.com/4v3bnvek, Veronique Koch and Robin Smith, *Scientists Can Tell How Fast You're Aging From a Single Brain Scan*, Duke Today (July 1, 2025), https://tinyurl.com/4r7bt664. The Whitman study specifically states that results of this imaging study robustly correlate with cognitive functioning. This study used MRI rather than PCT, but as Dr. Filler explained in his report, "Perfusion CT scanning" is "similar" to "MRI-ASL evaluations," and that both can be used for the same purposes. Filler Rep. at 26.

[15] Indeed, the standardized test would be limited even with respect to the areas which it does test because of its inability to compare her performance to her peers. DeRight Tr. 31:1-3.

Ultimately, the point of the PCT scan performed on Judge Newman was to show whether or not her brain has any abnormalities that could account for any cognitive deficits. The scan shows that no such abnormalities are present, and that indeed, her brain is healthier than one would expect it to be in a then-97-year-old patient. Filler Rep. 35. The particularly healthy perfusion of the hippocampal regions is noteworthy because as Dr. Rothstein testified, it is those regions that are affected in dementias, specifically of Alzheimer type and that imaging studies can detect these changes long before they manifest clinically. Rothstein Tr. 107:19-108:9. This is why Dr. Rothstein routinely recommends MRI evaluations to his patients.[16] *Id.* 104:22-106:8.

Finally, it is important to remember that the PCT that Dr. Filler has relied on for his conclusions is but one item of evidence. It must be viewed in conjunction with his neurological examination, his targeted evaluation of Judge Newman's memory and fluency, his review of Judge Newman's medical records, review of Judge Newman's opinions (which as a trained attorney he is in a unique position to do), and a review of prior evaluations by Drs. Rothstein and Carney. The combination of all of these data allowed Dr. Filler to reach his conclusion.

However, even if the Committee were disinclined to credit Dr. Filler's approach to evaluating Judge Newman, his report and underlying evidence still a) provide valuable information upon which the Committee can reach an "informed" decision as to Judge

[16] This testimony further supports the appropriateness of the evaluation conducted by Dr. Filler.

Newman's cognitive status, and b) preclude the possibility that any evidence of Judge Newman's disability would be "clear and convincing."

Everyone, including the Committee's own neuroradiology expert, Dr. Jason M. Johnson, agrees that the scan of Judge Newman's brain does not show any gross abnormalities. Johnson Tr. 55:7-19. This is important because, as both Dr. Carney and Dr. Rothstein testified (and as the Committee's experts at least implied), dementias caused by aging or diseases such as Alzheimer's would be expected to inexorably progress, so that a patient in 2025 would be noticeably worse off than the same patient in 2023. *See, e.g.*, Carney 269:2-18; Rothstein Tr. 124:11-19; *see also* Noble Tr. 289:3-290:11. In contrast, cognitive changes occasioned by discrete brain insults, whether stemming from trauma or stroke, are likely to remain stable (or perhaps improve). Thus, the absence of any evidence of gross abnormalities in Judge Newman's brain strongly suggests that she has not suffered any discrete insults such as a stroke or trauma. Consequently, to the extent her cognitive abilities have suffered, they would have suffered as a result of some form of progressive dementia, which in turn means that whatever Judge Newman's troubles may have been in 2023, they should be more prominent and more easily discernible in 2025.[17] Yet, there is no evidence of such deterioration over the course of the last two-and-a-half years. This lack of deterioration provides yet more evidence that Judge

[17] This conclusion follows directly from Dr. Noble's testimony where he opined that "[i]ndividuals with amnestic mild cognitive impairment accelerate their forgetting at a rate that's much faster than those who have non-amnestic cognitive impairment." Noble Tr. 289:12-15. Since one of the primary charges lodged against Judge Newman is that she forgets things like steps to access the network and even supposedly the content of recently issued opinions, *see* [redacted] Dep. at 3, ¶12, it would follow that her cognitive impairment (had she had one) would accelerate at a fairly high rate. The fact that no such acceleration has been noted by *anyone* speaks for itself.

Newman does not suffer from any dementia or mild cognitive impairment (which according to the Committee's own experts would be expected to progress to dementia). Thus, whether or not the Committee gives weight to Dr. Filler's overall approach to evaluating Judge Newman's cognitive abilities, the information that can be gleaned from the imaging studies *together with* information about Judge Newman's condition over the past two years (evincing no cognitive decline) provides the Committee with a more than sufficient basis on which to make an "informed decision" regarding Judge Newman's cognitive abilities.

B. Medical Records from Judge Newman's Providers Support Conclusions Reached by Drs. Rothstein, Carney and Filler

The medical records, to the extent that they shed any light at all on the dispute between Judge Newman and the Committee, confirm that Judge Newman does not suffer from any cognitive problems. One key item is that most of the experts in this case opine that degenerative mental disease gets worse. Carney 269:2-18; Rothstein Tr. 124:11-19; Noble Tr. 289:3-290:11; DeRight Tr. 39:13-40:3. Yet, over the many years of this case, there is zero evidence in her medical records of cognitive decline.

The Committee's experts identified several entries in Judge Newman's medical records that, in their opinion, did raise some concerns. However, upon closer inspection, it becomes evident that none of the entries to which the Committee's experts point actually suggest the presence of any notable problems.

The entry which Drs. Noble and DeRight particularly highlight is a "problem list" compiled sometime around April 27, 2022, which noted "Memory Impairment." *See* DeRight

Sup. Rep. at 2; Noble Sup. Rep. at 3. The records do not indicate who placed this problem on the list or why it was placed there. More importantly, the records do not indicate that this issue raised any concerns with any of Judge Newman's providers or that any of these providers recommended any follow-up to this problem. Of particular importance is that by November 5, 2023, at the latest, this issue was listed as resolved.[18] *See* PN_000003.[19] Given that "memory impairment" in a 90-plus-year-old woman was "resolved" without any intervention makes it highly unlikely that it was ever a significant problem in the first place. This is further confirmed by the fact that when Judge Newman was being seen on June 11, 2023, following her wrist fracture, the chart noted that her "memory [was] intact." PN_001518. The focus on the "memory impairment" notation, while ignoring the subsequent notations that such memory problems were "resolved" or that her memory was "intact" at a more recent examination, exemplifies these experts' approach, which is to comb the record to "raise questions" but not ever to opine that Judge Newman is cognitively impaired.

It is particularly noteworthy that *none* of Judge Newman's physicians, including her general practitioner whom she sees regularly, her cardiologist, her pulmonologist, any of the doctors whom she saw during her admission to the hospital for infection and sepsis, or anyone else, has at any point suggested that Judge Newman should be evaluated for any cognitive

[18] There is an additional note, dated April 1, 2024 which again lists "Memory Impairment;" *see* PN_001133, however, that note simply regurgitates a list of old problems. Thus, the same note also lists "Cramp in lower leg associated with rest," "pain in throat," and "muscle weakness," even though all of those problems were also resolved by November 5, 2023. *Compare id. with* PN_000003.

[19] There are multiple pages duplicating identical information. For the purposes of brevity, and except where necessary, only the citation to the first appearance of a note is used.

problems. Two separate November 2023 admissions for sepsis, *see* PN_000124-25, are particularly salient. At that time, Judge Newman spent, in two separate stints, 10 days in the hospital where she was continuously observed and examined by an entire team of medical professionals, and yet no one saw it fit to note *any* concerns about Judge Newman's mental condition. This is particularly noteworthy because it is well-known that sepsis can, and does, exacerbate such changes. *See, e.g.*, Romain Sonneville, *et al.*, *Understanding Brain Dysfunction in Sepsis*, 3 Ann. Intensive Care 15 (2013) ("Sepsis often is characterized by an early and acute encephalopathy…."); Bethan L. Carter & Jonathan Underwood, *Sepsis and the Brain: A Review for Acute and General Physicians*, 22 Clinical Med. 392 (2022) ("Sepsis-associated encephalopathy (SAE) describes acute cognitive dysfunction secondary to systemic or peripheral infection occurring outside of the central nervous system."). That Judge Newman did not have any mental symptoms—*even when septic*—further strongly suggests that her cognitive function is entirely normal.

Lending further support to the above conclusions is the consistency of recorded observations by various providers about Judge Newman's mental condition. Thus, on July 31, 2024, Judge Newman was noted to have "[n]o focal motor or sensory deficit; cranial nerves intact; normal gait; no abnormal mental status," as well as being "[o]riented to person time and place; [and having] mood and affect appropriate to situation; appropriate judgment and insight; memory intact." PN_000969. The same was noted on July 19, 2024, July 11, 2024, July 1, 2024, June 10, 2024, May 7, 2024, May 1, 2024, March 20, 2024, and February 28, 2024. PN_000976, 982, 992, 999, 1020, 1091, 1111, 1143, 1182. Notes for visits on other dates,

though using different locution, all say the same thing—Judge Newman has not been observed by any of her providers as having *any* neurologic or psychiatric symptoms. The consistent observations by a variety of providers, together with reports by Drs. Rothstein, Carney, and Filler, provide the Committee with additional reasonable basis on which to conclude that Judge Newman does not suffer from any cognitive problems. At a minimum, these data points, all of which overwhelmingly favor Judge Newman's position, necessarily foreclose the possibility (even in the face of an unfavorable neuropsychological report) that the Committee would be able to show, by clear and convincing evidence, that Judge Newman is disabled.

Neither Dr. Noble's nor Dr. DeRight's supplemental reports undermine this conclusion. In addition to the just-discussed issue of "memory impairment," Dr. Noble highlighted just two issues: 1) The presence of syncopal episode and its subsequent denial by Judge Newman, and 2) the incorrect date placed on one of the forms submitted to Dr. Filler (where Judge Newman's birth year is listed instead as 2024—the year the form was filled out).[20] According to Dr. Noble, Judge Newman's denial of a syncopal episode to Dr. Filler (after having acknowledged one to Dr. Carney the year before) "raises further concern for meaningful memory problems." Noble Sup. Rep. at 2. However, Dr. Noble simply misinterprets what Judge Newman has consistently said. Judge Newman has consistently denied a fainting episode alleged in Chief Judge Moore's order launching the investigation—

[20] Dr. Noble's criticism of failure to obtain "collateral source" information is discussed separately, *infra*.

an episode that allegedly occurred on May 3, 2022.[21] *See* March 24 Order at 1. Thus, Judge Newman's recitation that she "never fainted" was made (as it always has been) in the context of discussing with Dr. Filler the events triggering the investigation. (That Dr. Filler may not have fully explained the distinction in his report should not "raise[] [any] concern[s] for meaningful memory problems.").

Relatedly, Dr. Noble's concern that Judge Newman could not recall being "admitted" to the hospital after the April 2023 syncopal episode is overblown and meritless. The records indicate, and no one appears to dispute, that following that syncopal episode, Judge Newman spent less than 24 hours in the hospital. PN_001670. Though no one disputes that she was formally "admitted" as a patient, such a short stay may not register in a mind of a layperson as an "admission." As Dr. Carney testified, one would not "expect a non-medical person to understand that being in the hospital for less than 24 hours may be admitted … or not admitted."[22] Carney Tr. 138:19-21.

Dr. Noble's remaining point of concern—that an erroneous date on a form submitted to Dr. Filler may indicate a cognitive problem because "people contending with memory problems often make careless errors like these when completing various standard forms"—is premised on his "presum[ption] that Judge Newman filled out the form." Noble Sup. Rep. at

[21] We note again that the only witness to this alleged episode is Chief Judge Moore herself, and yet she has never provided *any* evidence to substantiate this claim.

[22] In contrast, when it comes to longer-term admissions, such as Judge Newman's several-day stay in the hospital for the treatment of sepsis, there is both a recall and no discrepancy with the description of the event.

4. However, as the undersigned counsel confirmed with [redacted], the form was filled out by [redacted] at Judge Newman's direction, with Judge Newman thereafter authorizing [redacted] to affix Judge Newman's electronic signature. In any event, Dr. Noble's own report suggests that the way to test such slip-ups is to see "if similar mistakes happen in other circumstances, such as when dating a personal check for bill payment." *Id.* Given that no such errors were made when, for example, Judge Newman wrote a check to Dr. Carney or executed an agreement with her, see Carney Tr. 221:8-13, it appears evident that even had Judge Newman been the one completing the Filler form (and she was not), an erroneous date would have been an innocent error.[23]

Dr. DeRight's review of Judge Newman's medical records is even more problematic. Though he identifies more supposed areas of concern, the citations do not support even a suggestion of any cognitive problems. Indeed, much of Dr. DeRight's review (to the extent it is not repetitive of issues identified by Dr. Noble) consists of little more than guesswork or out-of-context citations. In addition to the "memory impairment" and "syncopal episode" issues already discussed, Dr. DeRight identified the following problems: 1) "significant unintentional weight loss," DeRight Sup. Rep. at 3; 2) "concern about dressing inappropriately for the weather," *id.* at 4; and 3) "chronic kidney disease," *id.* at 5.[24] None of these issues

[23] To be crystal clear, in reality, the error is entirely attributable not to Judge Newman, but to [redacted].

[24] Dr. DeRight also highlights that [redacted] has been listed in some records as Judge Newman's "legal guardian." As the Committee well knows, in the District of Columbia, "legal guardianship" is a term of art referring to a court-ordered arrangement. *See* D.C. Code § 21-2011(8) ("'Guardian' means a person who has qualified as a guardian of an incapacitated individual pursuant to court appointment…."). [redacted] is an "emergency point of contact" and a friend (in addition to being a law clerk), but she is not a "legal guardian."

provides any support for the conclusion that Judge Newman suffers (or even potentially suffers) from cognitive decline.

With respect to weight loss, there are several issues which Dr. DeRight simply ignores. First, the notation of weight loss was made about two months after two rather prolonged hospital admissions for sepsis. *See* PN_001174-77 (dated 01/30/24). Weight loss, as is fatigue and weakness, are common symptoms associated with sepsis. Indeed, these symptoms persist *after* discharge from the hospital, as the body recovers from such a significant insult. *See* Cleveland Clinic, *Sepsis*, https://tinyurl.com/4jvpzn74. That Dr. DeRight did not even note the association (or even possible association) between Judge Newman's hospital admissions for sepsis and her weight loss casts doubt on his entire report, and strongly suggests that he was merely picking random facts out of context to support his preordained conclusion that additional neuropsychological testing is needed.[25] Second, the weight loss (to the extent it can be attributed to anything other than sepsis and post-sepsis recovery) is most likely the product of the high level of stress experienced by Judge Newman beginning in early 2023 as a result of this very investigation, rather than as a result of any cognitive dysfunction. That this weight loss is not actually indicative of any cognitive problems is further confirmed by the fact that since that notation, Judge Newman has regained her normal weight, and her fatigue (which

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It is rather surprising that Dr. DeRight, who has supposedly been involved in multiple judicial proceedings, does not know the meaning of these terms.

[25] Alternatively, given the fact that Dr. DeRight is not a medical doctor and has no medical training, his failure to notice an association between certain symptoms and various physiological (rather than psychological or cognitive) causes, could be explained by his lack of medical knowledge. The same applies to his discussion about Judge Newman's allegedly "inappropriate" dress. *See infra.*

was due to well-documented anemia) has fully resolved.[26]

Dr. DeRight also notes that "[f]orgetting to eat meals—especially for an entire day—can be a result of cognitive impairment." DeRight Sup. Rep. at 3. However, there is no evidence that Judge Newman has actually "forgotten" to eat her meals. True enough, in April 2023, Judge Newman had "not eaten for a day and a half prior to being admitted for a syncopal episode." PN_001437. However, it is pure speculation that Judge Newman "forgot" to do so. Again, a much more likely explanation is that this was the time when Judge Newman was being snowed with various orders from the Special Committee[27] and thus was laboring under the (Committee-induced) stress which led her not to "forget" her meal, but to not feel hungry. *See* Cleveland Clinic, *Loss of Appetite*, https://tinyurl.com/yhn5a9kn (noting that anxiety can cause loss of appetite). Again, it is curious that Dr. DeRight did not even note the timing of the episode or correlate it with well-documented events in Judge Newman's life.

Furthermore, Dr. DeRight's own report undermines the very concerns he raises. Thus, Dr. DeRight writes that "[a]mong individuals with mild cognitive impairment, weight loss has been linked to over three times higher risk of developing both dementia and Alzheimer's disease, meaning that *accelerated progression towards dementia is expected* when weight loss is observed in those with mild cognitive impairment." DeRight Sup. Rep. at 3. Yet, as discussed

[26] The anemia also explains "feeling 'woozy.'"

[27] Between March 24, 2023 and April 19, 2023, Judge Newman was hit with six separate orders (roughly two orders a week) authored either by the Committee or the Chief Judge. These are separate from various (rather hostile) email exchanges and changes to the staffing of her chambers that occurred during this time.

above, Judge Newman has exhibited *no signs* of any sort of progression (much less accelerated progression) toward dementia in the last two-and-a-half years.

Dr. DeRight's flagging of Judge Newman supposedly "dressing inappropriately for the weather," *id.* at 4, is also hard to square with the rest of her medical history. First, even assuming that on one occasion, Judge Newman was dressed "inappropriately" for the weather, there is no indication from her multitude of visits to various providers that this was ever raised as a concern. Additionally, Dr. Carney, in her report, and Dr. Rothstein, in his deposition, specifically noted that Judge Newman was well and appropriately dressed, Carney Rep. at 2; *see also* Rothstein Tr. 131:17-18, thus allaying any concerns that Judge Newman "dress[es] inappropriately for the weather."[28] Once again, a single incident is cherry-picked and highlighted as somehow more probative to a record replete with cognitive solidity, such as writing opinions affirmed by the Supreme Court.

Second, and more importantly, on the day that Judge Newman was supposedly "inappropriately" dressed, she was significantly hypotensive with blood pressure measuring as low as 71/41 and not reaching higher than 91/60. PN_000969. As Dr. Carney explained, low blood pressure means that one is not sufficiently perfusing her extremities, one "certainly can feel cold and -- and clammy." Carney Tr. 262:3-12. Thus, one would *feel* cold even though

[28] Again, Dr. DeRight's own report undermines the very concerns he raises. In the section about supposedly "inappropriate" dressing choice, Dr. DeRight discusses such poor choice of dress almost exclusively as a symptom of patients with Alzheimer's disease. But as is conceded by everyone, Alzheimer's is a relentlessly progressive disease and one would expect, especially absent any treatment, a person with such a disease to deteriorate over the course of two-and-a-half years. Yet, when it comes to Judge Newman, no such deterioration is noted.

objectively the outside weather is quite warm. *See* WebMD, *Low Blood Pressure (Hypotension): Symptoms, Causes, and Treatment*, https://tinyurl.com/2ueveyps (noting that one of the symptoms of hypotension is "cold, clammy skin"). Again, it is surprising that Dr. DeRight did not note Judge Newman's low blood pressure readings, which were listed in the same note a mere three lines above the comment about "long pants."[29]

Coming to kidney disease, Dr. DeRight's observations border on trite. As Judge Newman has previously indicated to the Committee, there is no dispute that certain medical conditions (if not treated), including "sick sinus syndrome" or chronic kidney disease *can* cause cognitive deficiencies. Dr. DeRight observes no more than that, and Judge Newman does not dispute that banal observation. But the question is not whether various physiological problems *could* have a cognitive effect, but whether they *did* have a cognitive effect. Looking at Judge Newman's medical records to identify physical conditions that may (or may not), as a general matter, have a cognitive sequela does nothing to show that Judge Newman actually had any cognitive sequelae. Furthermore, given the long-standing nature of Judge Newman's kidney condition, her regular follow-ups with her nephrologist, the fact that her nephrologist would obviously be aware of the common cognitive consequences of chronic kidney disease, it is noteworthy that nowhere in Judge Newman's medical records does her nephrologist indicate any concern regarding her cognitive state. Thus, Dr. DeRight's speculations about what a

[29] It should also be said as the members of the Council personally know, that, as a general matter, it would be quite unlike Judge Newman to be wearing shorts even in warm weather. Thus, for Judge Newman to wear "long pants" is really not a sign of anything at all.

kidney disease *might* do (though correct as an abstract matter) are entirely irrelevant to the case at hand.

II. THE SUBMISSIONS OF THE COMMITTEE'S EXPERTS DO NOT CAST DOUBT ON JUDGE NEWMAN'S MENTAL FITNESS

The Committee engaged three separate experts to cast doubt on Judge Newman's cognitive abilities and/or the reports of three physicians who have actually seen and examined Judge Newman. None of the submissions meets the challenge.

A. Dr. Johnson

Dr. Johnson is a neuroradiologist, and his report focused exclusively on criticizing Dr. Filler and did not touch on the reports by Drs. Rothstein and Carney. Dr. Johnson attacked Dr. Filler on two fronts. First, he claimed that Dr. Filler's initial report mislabeled hippocampi. Johnson Rep. at 2. Second, Dr. Johnson criticized the use of PCT for the diagnosis of dementia, relying in large part on the fact that the technology utilized by Dr. Filler has never been FDA-approved for dementia diagnosis. *Id.* at 4-5. Both points miss the mark.

With respect to the first criticism, as Dr. Filler explained in his rebuttal report (and is evident from his initial report), the areas which he labeled indicate not hippocampi themselves, but the *blood flow* to the hippocampi. Filler Resp. at 7-8, ¶13. The image in question "is not a vascular anatomy image—Perfusion CT is used to create Cerebral Blood Flow (CBF) assessments that calculate [] regional differences between the Arterial Input Function (AIF) and the Venous Outflow Function (VOF). … The arrow designates a CBF region that includes some of the of hippocampal venous outflow." *Id.* Thus, Dr. Johnson's observation that the labeled areas are not hippocampi, while entirely true, are irrelevant, since no one ever claimed

that they were hippocampi. To drive home the point, at his deposition, Dr. Johnson admitted that it was highly unlikely that someone with Dr. Filler's training, experience, and credentials (including authorship of a literal textbook on neurosurgery) would make a mistake as to the location of such a basic brain region as a hippocampus. Johnson Tr. 44:12-45:9.

Dr. Johnson's second criticism is equally hollow. It is not disputed that the Food and Drug Administration has not approved iSchema software utilized by Dr. Filler for the diagnosis of dementia. But as Dr. Johnson admitted at the deposition, FDA's approval is not necessary for physicians to prescribe otherwise-approved medication or to utilize otherwise-approved technologies. Indeed, the FDA itself recognizes the wide "off-label" use of various medications. *See* FDA, *Understanding Unapproved Use of Approved Drugs "Off Label,"* https://tinyurl.com/yphtjsfj. *See also* James M. Beck & Elizabeth D. Azari, *FDA Off-Label Use and Informed Consent: Debunking Myths and Misconceptions*, 53 Food & Drug L. J. 71 (1998). In fact, about 20% of all prescriptions in this country are used "off-label." *See* David C. Radley, *et al.*, *Off-label Prescribing Among Office-Based Physicians*, 166 Arch. Intern. Med. 1021 (2006). Thus, it is neither surprising nor remarkable that iSchema is not FDA-approved for dementia screening. Such lack of approval does not indicate that the use of the technology is somehow improper, not informative, nor otherwise problematic. At his deposition, Dr. Johnson recognized as much. Johnson Tr. 31:12-34:7; 48:10-49:2.

Though Dr. Johnson's criticisms of Dr. Filler's approach ultimately do not land a punch, his admissions during the deposition undermine the argument that screening tests such as the MoCA or the 3-MS are insufficient to rule out cognitive problems. As Dr. Johnson

admitted during his deposition, he is a primary author of a study where such screening tests were used to separate individuals who needed additional evaluations from those who did not. Johnson Tr. 94:17-105:2. Indeed, the tests used by Dr. Johnson were much cruder than even the MoCA, not to mention the 3-MS. *Id.* 105:17-108:5. According to Dr. Johnson, a sufficiently high performance on the screening test would mean that no further testing would be recommended. *Id.*; *see also* Johnson Dep., Exhs. 6-7. This admission severely undermines the claim of the Committee's other experts that tests like MoCA and 3-MS, especially when used in combination with other examinations and Judge Newman's medical records, cannot provide sufficient information to assess Judge Newman's cognitive abilities.

Finally, Dr. Johnson's deposition testimony is also notable for his admission that he did not observe any gross abnormalities in the images of Judge Newman's brain. Johnson Tr. 55:7-19. This admission is important because it rules out traumatic injury or a stroke—insults that may cause cognitive problems, but ones that are unlikely to deteriorate. Ruling out these possible problems (as already discussed) leaves open only the possibility of progressive degenerative disease. But if so, then one would expect the disease to actually progress and the condition to actually degenerate. The lack of such progression or deterioration makes the presence of such a degenerative condition particularly unlikely.

B. Dr. Noble

Much of Dr. Noble's report and testimony has already been discussed; however, a few additional issues need to be highlighted, which further undermine the credibility of Dr. Noble's report and conclusions.

As an initial matter, though Dr. Noble later claimed that he was not attempting to diagnose Judge Newman (having never met her), his initial report categorically states that Judge Newman should have been given a diagnosis of "mild cognitive impairment." Noble Rep. at 21. Such "drive-by" diagnoses are not only unscientific but wholly unethical. *See* Am. Psych. Assn., *Principles of Medical Ethics* § 7.3.[30]

Dr. Noble's report is also self-contradictory and therefore nonsensical. For example, Dr. Noble has stated that no matter how much information was provided to him undermining the claim that Judge Newman is suffering from cognitive decline, he would not be satisfied in the absence of a full neuropsychological battery. Noble Tr. 188:14-18; 215:20-217:3; 285:5-288:19. According to Dr. Noble, the affidavits gathered by the Committee alone would outweigh any and all other data points—whether Judge Newman's written output, her oral presentations, the opinions of other experts, notes of her own medical providers, or even collateral source information indicating that Judge Newman's mental condition today is no different than it was three, four, or five years ago. *Id.* Such an attitude suggests that Dr. Noble's approach is anything but disinterested and objective; instead, it is geared toward a single pre-determined conclusion.

Dr. Noble's report and testimony are also self-contradictory. For example, he testified that irrespective of Judge Newman's performance on MoCA (were she to take it again) or 3-MS, or any other screening test, she would still need to undergo the full battery of

[30] This "diagnosis" is particularly problematic and unethical given that Dr. Noble rendered this opinion *prior to* even seeing Judge Newman's medical records.

neuropsychological tests. *Id.* at 215:10-15. Yet, in the same breath, he criticized Dr. Filler's neurological examination for not first administering a screening test. Noble Rep. at 10; Noble Tr. 215:2-19. In other words, Dr. Noble criticized Dr. Filler for not administering a test that would not have been meaningful in his decision whether to proceed with further testing. When questioned about this seeming contradiction during his deposition, Dr. Noble was unable to explain why he deemed the lack of, what he claimed is an essentially a useless test,[31] to be a problem in Dr. Filler's examination. The best that Dr. Noble could say is that the administration of such a test is "standard." *Id.*

Similarly, Dr. Noble criticized Dr. Filler for not obtaining collateral source information from [redacted], who in Dr. Noble's words "would be very helpful" to assessing Judge Newman's history of cognitive performance. Noble Tr. 284:14-286:1. At the same time, Dr. Noble again stated that none of the information that [redacted] could or would provide would diminish the need for a full neuropsychological battery testing of Judge Newman. *Id.* at 287:3-14. If that is the case, then it is difficult to understand what possible value information provided by [redacted] would have or what drawbacks there might be as a result of the absence of such information.

These internal contradictions in Dr. Noble's submissions, coupled with the fact that he that he failed to consider any information other than the negative affidavits supplied by this Committee, make his entire opinion unreliable. Additionally, the fact that he has never

[31] Judge Newman, of course, does not concede that these tests are "useless," as they are widely recognized as appropriate screening tests.

examined Judge Newman makes his claim the proper diagnosis should have been "mild cognitive impairment," Noble Rep. at 21, worthless.

C. Dr. Deright

Dr. DeRight's submissions are, in many ways repetitive of and no more useful than those of Dr. Noble. Nevertheless, there are several points that are worth highlighting in Dr. DeRight's submissions.

First, Dr. DeRight's report claims that neuropsychological training is "objective." *See, e.g.*, DeRight Rep. at 8. Yet, when questioned during the deposition, Dr. DeRight could not even state with any level of certainty which tests *he* would pick as part of a neuropsychological battery of tests, much less which tests other neuropsychologists would select. DeRight Tr. 25:4-5. To make matters worse, Dr. DeRight could not explain what would constitute a sufficiently strong performance on such a battery of tests to conclude that Judge Newman (or anyone else) is or is not fit to continue in federal judicial office. *Id.* at 29:8-30:8. Dr. DeRight admitted that different neuropsychologists might well come to different conclusions as to that question, even when presented with identical data. *Id.* at 29:8-17. This testimony both confirms Dr. Filler's criticism of neuropsychology tests as being subjective and justifies Judge Newman's reluctance to participate in this process, especially given the likelihood that this Committee would latch onto any ambiguity in the testing results or in a neuropsychologist's report.

Dr. DeRight's report is also notable for its heavy reliance on the Diagnostic and Statistical Manual of Mental Disorders, 5th edition—Text Revision (DSM-5-TR). *See* DeRight

Rep. at 10-11, 15-16, 24, 30. During his deposition, however, Dr. DeRight admitted that DSM-5-TR is not without controversy and is not relied on by a large portion of mental health professionals. DeRight Tr. 57:17-59:2.

Dr. DeRight's report also mischaracterizes Dr. Filler's examination. For example, Dr. DeRight writes that "guidelines used to diagnose cognitive impairment … do not involve *simply administering* a Perfusion CT scan." DeRight Rep. at 15 (emphasis added). Of course, Dr. Filler did much more than "simply administer[] a Perfusion CT scan."

Finally, Dr. DeRight's report and deposition testimony make such odd claims as to call into question his entire submission. For example, Dr. DeRight opined that "learned behaviors" such as "debating" are less likely to suffer during early cognitive decline and thus deficits in these behaviors are less likely to be noticed. DeRight Rep. at 5; DeRight Tr. 40:17-41:13. According to Dr. DeRight, participation in a debate involves nothing more than "remember[ing] what [the interlocutor] said in the last sentence [he] said and then say[ing] *something*" in response. DeRight Tr. 41:9-10 (emphasis added). The silliness of this proposition is rather self-evident. Participation in a debate is more than Monty Python's *Argument Clinic* sketch where one participant simply responds to every proposition with "No, it isn't." To the contrary, and as another character in that sketch explains, "[a]n argument is a connected series of statements intended to establish a definite proposition … An argument is an intellectual process. A contradiction is just the automatic gainsaying of anything the other person says." Monty Python, *An Argument Clinic*, https://tinyurl.com/2mz6pfkz. To suggest that debating is simply a learned behavior, akin to singing the oldies or playing solitaire, is self-evidently

wrong. That a mental health professional would make such an odd claim undermines his credibility beyond repair.

Ultimately, Dr. DeRight concludes that the evidence submitted by Judge Newman does not "definitively" rule out cognitive problems. DeRight Rep. at 31. However, this criticism is undermined by his statement that even neuropsychological testing may not "definitively" do so. It is undermined further still by his testimony that absent the full neuropsychological testing, he is unable to "definitively" rule out cognitive dysfunction in *anyone*, including members of this Committee or the attorneys that were present at deposition. DeRight Tr. 96:16-21. That cannot be the standard for mental fitness in the workplace.

III. THE COMMITTEE CAN NOW REACH AN INFORMED CONCLUSION AS TO JUDGE NEWMAN'S COGNITIVE CONDITION

Judge Newman maintains that there is no basis to believe that she suffers from any sort of cognitive decline and that the quality of her work product prior to being effectively deprived of her office speaks for itself. She further maintains that the evaluations by Drs. Rothstein, Carney, and Filler confirm her ability to continue in office. But even if the Committee disagrees with Judge Newman's ultimate position, it cannot deny that it now has a wealth of information before it that would allow it to reach an "informed" judgment with respect to Judge Newman's cognitive status. Specifically, the Committee now has before it opinions of three separate clinicians who examined Judge Newman, images of Judge Newman's brain, medical records that the Committee's own experts deemed to be relevant, and the (flawed) affidavits which it compiled in 2023.

Contrary to Dr. DeRight's assertions that a full neuropsychological battery is a "gold standard" to diagnose cognitive problems, research shows that a shorter examination (comprising MoCA, Benson Complex Figure Recall, and Craft Story 21 Delayed Recall) is actually *better* in discriminating mild cognitive impairment and dementia from normal cognition. *See* Tau Ming Liew, *Developing a Brief Neuropsychological Battery for Early Diagnosis of Cognitive Impairment*, 20 J. Am. Med. Dir. Assoc. 1054.e11 (2019), https://tinyurl.com/ms7ht8r8.

Even assuming, *arguendo*, that the full neuropsychological battery is the "gold standard" in diagnosing cognitive problems, reasonable and rational conclusions can be reached even when the "gold standard" is absent. Indeed, every day, in every courtroom in the country, such decisions are reached in both civil and criminal cases. For example, DNA and fingerprints may be the "gold standard" to prove someone's guilt in a criminal case, but courts routinely convict people of all sorts of crimes, including capital murder, even in the absence of such "gold standard" evidence. Courts also routinely reach conclusions about a defendant's competency even where such defendant refuses to participate in the evaluation. *See, e.g.*, *United States v. Salley*, 246 F. Supp. 2d 970, 972 and 974 (N.D. Ill. 2003) (concluding that the defendant was incompetent to stand trial even where the defendant "refused to submit to standardized psychological tests" and even where at least one of the evaluating physicians was able to "neither exclude the possibility of delusional disorder nor confirm th[e] diagnosis" of delusional disorder); *United States v. McCray*, 474 F. Supp. 2d 671, 674 (D.N.J. 2007) (concluding

that the defendant is incompetent even though "[d]efendant refused to cooperate with the evaluation process and at times refused to speak to evaluators at all.").

Similarly, the FDA approves medications that have not gone through "gold standard" "double blind" studies. *See, e.g.*, Karen M. Higgins, *Considerations for Open-Label Clinical Trials: Design, Conduct, and Analysis*, https://tinyurl.com/2rufhaa6. And the Federal Circuit itself previously endorsed the position that just because something may be a "gold standard" in the industry, it does not follow that adhering to that standard is the only way to prove or disprove a certain fact. *See, e.g.*, *Sanofi-Aventis v. Pfizer Inc.*, 733 F.3d 1364, 1369 (Fed. Cir. 2013) (Newman, J., for a unanimous panel) (endorsing the opinion of the Board of Patent Appeals and Interferences that while "for proteins and polynucleotide species, a sequence is the gold standard for identifying species with precision[,]… It does not, however, thereby follow that a sequence is the only way to identify the composition precisely.").

It may be that Judge Newman's refusal to participate in neuropsychological testing (at least for so long as the matter remains pending before *this* Judicial Council) deprives the Committee of the "gold standard" upon which to evaluate her fitness for office. But "[i]t does not, however, thereby follow that [neuropsychological testing] is the only way to identify" cognitive deficits or fitness for continued service. *Id.* The Committee may not have the gold standard, but it has a silver or bronze one. It can make its judgment on that basis.

Furthermore, even if the Committee *did* have the results of neuropsychological testing in front of it, and even assuming such results *did* show some cognitive problems, given significant evidence on the other side of the scales, the Committee (were it approaching this

matter objectively) would be unable to conclude that there is "clear and convincing" evidence that Judge Newman is disabled. At best, the Committee would be faced with conflicting evidence from multiple providers, with the conflict necessarily having to be resolved in Judge Newman's favor.[32] In other words, even were the Committee to have their "gold standard," it does not follow that the opinions of Judge Newman's treating physicians and expert witnesses ought not to carry great (even if not dispositive) weight.

Obviously, in Judge Newman's view, the conclusion that should be reached is that she is fully capable of continuing to work as an active judge of the Federal Circuit—and she should be returned to the bench immediately. But the Committee is free to reach the opposite conclusion. If it does so, neither the law nor the Constitution would permit the Committee to permanently suspend Judge Newman from office. In cases of disability, the law limits the Committee to just two options—requesting that the judge voluntarily retire (which won't happen here), *see* 28 U.S.C. § 354(a)(2)B)(ii), or certifying the disability to the President of the United States, thus permitting him to appoint a supernumerary judge and relegating Judge Newman to the status of a most junior, yet still active judge of the court, *see* 28 U.S.C. § 372(b). Given the limitations that the Constitution and the statute impose on the Committee, it is unclear what exactly the Committee is hoping to achieve by having Judge Newman sit for the neuropsychological battery. Even assuming that a neuropsychologist were to conclude that

[32] That resolution in her favor would remain necessary even were the Council to weigh some evidence (such as results of neuropsychological testing) more heavily than other evidence.

Judge Newman is *not* fit for duty, the Committee would be powerless to deny her the ability to exercise the functions of her office.[33]

IV. THE MATTER MUST BE TRANSFERRED FOR THREE SEPARATE REASONS

Judge Newman will not repeat all her prior arguments for why a transfer of this matter is necessary and required, but she incorporates them by reference. *See, e.g.*, Aug. 31, 2023 Response at 99-105; July 5, 2023 Letter Br. at 4-12. The basic notions of due process, going back centuries, dictate that the people who are the most salient fact witnesses (or to use Committee experts' words "collateral sources") cannot also be adjudicators of the very facts to which they would be testifying to. Furthermore, the depositions of the Committee's own experts provide additional due process and prudential reasons as to why transfer is required. Given all of these conflicts, failure to transfer is an abuse of discretion because it violates basic constitutional norms.

First, both Dr. Noble and Dr. DeRight placed high importance on obtaining information about Judge Newman's current state of affairs from "collateral sources" as part of the overall fitness for duty evaluation. Noble Tr. 65:9-16; Noble Rep. 5, 9; DeRight Tr. 25:10-12; DeRight Rep. at 17-18, 21-22. Dr. Noble was particularly clear that given that Judge Newman lives alone, "collateral sources" includes only information from Judge Newman's coworkers, especially those that are most familiar with her work, *i.e.*, other judges. Noble Tr.

[33] As discussed in Judge Newman's filing in the D.C. Circuit, even where a judge had indisputable problems with executive function, he was nevertheless permitted to maintain his full civil docket, precisely because full suspension from judicial duties is not permitted administratively. *See Newman v. Moore*, No. 24-05173 (D.C. Cir.), ECF 41 at 16-17, n.6 (citing ProPublica, *Life Tenure for Federal Judges Raises Issues of Senility, Dementia*, (Jan. 18, 2011), https://tinyurl.com/2nk5x26p).

69:14-70:11; 225:8-13. Of course, these "other judges" are also members of the Council and will ultimately be sitting in judgment of any report submitted by any neuropsychologist. But as Judge Newman has explained time and again, one cannot be both a fact witness and a judge—a principle dating back centuries. *See, e.g.*, *Calder v. Bull*, 3 U.S. (3 Dall.) 386, 388 (1798) (explaining that it would be "against all reason" to "make[] a man a Judge in his own cause.") (Opinion of Chase, J.). Thus, despite this Committee's prior assurances that it can proceed without relying on Judge Newman's colleagues' own perceptions, *see, e.g.*, 2023 R&R at 32-33, 70, the Committee's own expert witnesses state that such non-involvement would actually limit the ability to conduct a proper fitness-for-duty evaluation. The fact that the Committee determined that "testimony from judges about interactions with Judge Newman … should be *excluded* from the Committee's inquiry," *id.* at 70 (italics in original, underlining added) is irrelevant to the question of whether a fitness-for-duty evaluation of the type that the Committee's own experts would find to be acceptable, would require "testimony from judges about interactions with Judge Newman." Since (as per the Committee's own expert witnesses) the involvement of her colleagues would be *required* to conduct a proper fitness-for-duty evaluation, it necessarily follows that these judges must be recused. *See id.* at 69 (citing R. 20(d)).

Relatedly, the Committee's own experts placed particular emphasis on obtaining information from [redacted] due to her closeness with Judge Newman. *See* Noble Tr. 284:14-286:1. It is Judge Newman's and her counsel's understanding that while [redacted] is willing to provide such information in a proper setting, given the process thus far, and especially the

treatment of [redacted] herself, she is concerned about retaliation by Committee and especially Chief Judge Moore—and her concerns are entirely justified. But even if [redacted] concerns were overblown, her refusal to engage with this Committee (or its experts) cannot be held against Judge Newman. Judge Newman is entitled to due process of law even where a key witness unjustifiably refuses to cooperate with particular investigators. (To be clear, it is Judge Newman's position that [redacted] reticence to provide information to Chief Judge Moore is fully justified in light of Chief Judge Moore's own actions). The point, however, is this—if the goal is to have truly full and complete information prior to rendering any decision, then the Committee ought to endeavor to create an environment where such information is most likely to be obtained. In this matter, the Federal Circuit can never provide such an environment.

Second, Dr. DeRight testified that sometimes "[i]n the course of [a workplace] conflict, the employee who poses a problem for reasons other than mental health may be forced to undergo a fitness for duty evaluation." DeRight Tr. 121:18-122:21. When that occurs, it is unethical proceed with such a forced evaluation. *Id.* at 123:18-124:4. *See also* DeRight Dep. Exh. 11. Given that there is at least a genuine dispute as to whether the requested neuropsychological examination is being requested for legitimate purposes, rather than because of a workplace conflict, a transfer is necessary to remove any such cloud and legitimate the request. So long as the matter remains pending with this Council, and so long as this

"workplace conflict" persists, it would actually be unethical for a neuropsychologist to conduct a fitness for duty evaluation.[34]

Third, as if last year's recitation of the deteriorating relationship between Judge Newman and her colleagues weren't bad enough, this year's developments are worse still. For example, sometime around April 2025, the Federal Circuit held a ceremonial session for a portrait presentation. It has *always* been the case that for such events all the judges of the court gather on the dais to celebrate a colleague. However, this time, Judge Newman was not invited to join her colleagues, and was treated as if she is no longer a judge of the Court. This unnecessary and deliberate slight can only be described as mean-spirited and petty, and it further buttresses Judge Newman's argument that the members of this Committee (and the Judicial Council), and particularly Chief Judge Moore, are biased against and have exhibited animus toward Judge Newman. If Judge Newman's colleagues are acting in such petty and mean-spirited ways in matters having only ceremonial significance, there is little reason to believe that they will act more conscientiously when more important and fundamental issues are on the line. At the very least, permitting individuals who have acted in such a way to adjudicate the dispute is unlikely to promote "[p]ublic confidence in the integrity and impartiality of the judiciary." R. 4, comm.

[34] Additionally, Dr. DeRight testified that at the very least, in cases of such potential conflict, "both sides will agree to have a single or multiple experts evaluate them, and then they're not hired by either side." DeRight Tr. 129:11-13. Yet, the Committee steadfastly refused to engage with Judge Newman from the outset about identifying a mutually agreeable medical professional to conduct any examination.

Finally, it should be painfully obvious by now that Judge Newman will not comply with the requests to undergo any further testing (at least for so long as this matter remains with the Federal Circuit). This fact remains so despite the Council's previously imposing the harshest sanctions available under the statute and in the history of the country. It has become obvious, if it was not already, that this matter "is not amenable to resolution by the judicial council." 28 U.S.C. § 354(b)(2)(B). The Disability Act explicitly provides that in such cases a judicial council *shall* transfer the matter to the Judicial Conference. *Id.* This provision takes into account the Committee's and the Council's prior objections that such a transfer (given the voluminous record) would be taxing to the transferee council, because the provision contemplates the transmission of "any complaint and a record of any associated proceedings" to the Conference.[35] Thus, even if the Committee remains unwilling to transfer the matter to another judicial council as a matter of discretion, it must transfer it to the Judicial Conference as the statute requires.

V. NO FURTHER SANCTIONS ARE WARRANTED

For reasons discussed in prior submissions, *see, e.g.*, June 28, 2024 Response at 17-24; Aug. 14, 2024 Response at 27-36, which need not be repeated here, but are fully incorporated by reference, no further sanctions are warranted. The Council should make no mistake;

[35] In any event, the concern about "taxing" the transferee judicial council never made any sense because the voluminous record would have to be reviewed anyway by the JC&D. Thus, the mere fact that other judges would have to read through the materials (however voluminous)—a task in which they engage on a daily basis—cannot possibly counsel against transfer.

additional sanctions will not result in Judge Newman's submitting to what continue to be illegitimate demands of her.

Furthermore, the very expert reports which the Committee itself has procured belie the assertion that the Committee has been "thwart[ed]" "prevented … from fulfilling its statutorily assigned role." 2023 R&R at 109, 110. Indeed, the Committee's use of and reliance on Dr. Noble's report contradicts the *entire basis* for its orders sanctioning Judge Newman for her "lack of cooperation" in the first place. Throughout this process, the Committee has insisted it could not accurately evaluate Judge Newman's cognitive state without a personal examination by the Committee's chosen experts. Yet, if the Committee were to credit Dr. Noble's report, it would be in the middle of an indefensible contradiction—insisting that Judge Newman must remain sidelined for her supposed "noncooperation," which allegedly prevents assessment of her cognitive condition, while simultaneously injecting into the record its own physician's determination that Judge Newman is cognitively impaired.

The Committee has injected Dr. Noble's remote diagnosis of at least "mild cognitive impairment" into these proceedings.[36] Noble Rep. at 21. Leaving aside whether it was ethical for Dr. Noble to proffer such an opinion without having examined Judge Newman, it is evident that the Committee is in no way "thwarted" or otherwise "prevented" from reaching

[36] For reasons stated at length *ante*, Judge Newman takes the position that the Committee, even with the assistance of its experts (and even were Judge Newman to submit to neuropsychological battery) would not be able to carry its burden. However, if the Committee is of a different view, the it should bring the proceedings to a close by crediting its own experts and invoking the relevant provisions of the Disability Act. *See* 28 U.S.C. §§ 354(b); 372(b).

a conclusion as to Judge Newman's health. In other words, whether the Committee chooses to credit Dr. Filler or Dr. Noble, it has sufficient information to reach a conclusion. Accordingly, instead of sanctions, the Committee ought to publicly state its conclusions and close its "investigation."

CONCLUSION

These proceedings should be brought to a close. The Committee now has before it a wealth of information that permit it to come to a conclusion. Adding additional information will not change the analysis because even in the presence of this additional information (such as results of neuropsychological tests) the Committee would not be able to meet its burden of proof.

However, if the Committee and the Judicial Council do wish to further assure themselves and the public of Judge Newman's continued competence (though, in light of the evidence submitted by Judge Newman, no additional reassurance is needed), there are several avenues proposed by Judge Newman that will help accomplish that goal. These paths forward still remain open. At the same time, the Council's high-handed approach and bullying tactics will not work. Because Judge Newman is being asked not merely to undergo (unnecessary) medical testing, but to have the results of that testing evaluated by individuals who have exhibited bias, lack of objectivity, disregard for the rules of this process, and outright hostility to her, she will not honor the request so long as the process remains pending in this forum. This is more than just a just a personal pique or objection by Judge Newman. Instead, Judge Newman is upholding the constitutional guarantees of life tenure and the right of every judge

to due process in the disciplinary disability evaluation proceedings. As has been explained to the Committee on multiple occasions, due process requires, *at a minimum*, that people who are witnesses not also serve as judges. This is a matter of deep principle, and it is regrettable that the Committee does not appear to share these same principles. It is these principles, to which she has dedicated her entire life, which are the reasons that she is not going to change her mind irrespective of what this Committee does. In order to comply with basic due process requirements, this Committee should either bring the proceedings to a close or

In the alternative, the matter should be referred to the Judicial Conference under 28 U.S.C. § 354(b) because it is beyond peradventure that Judge Newman and her colleagues have reached an impasse. On one hand, no additional sanctions will force Judge Newman to retreat from her well-considered and constitutionally sound position. On the other, if the Committee refuses to transfer the matter to another council or to bring the proceedings to a close, it will remain (supposedly) unable to "fulfill[] its statutorily assigned role." 2023 R&R at 109. Thus, despite the statutory requirement that complaints be "expeditiously" resolved, 28 U.S.C. § 353(c); R. 4, comm., no resolution is likely to ever, much less "expeditiously" be reached.

Finally, the Committee is also free to inform Congress that it believes that Judge Newman should be impeached and have Congress make the ultimate determination, as the Constitution provides

Should the Committee continue on its course and not take any of the options laid out by Judge Newman, this matter will have to be resolved in a real court rather than in this irretrievably tainted administrative proceeding.

STATEMENT ON ORAL ARGUMENT

Pursuant to Rule 15(d), Judge Newman requests oral argument before the Committee.[37]

/s/ Gregory Dolin
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[37] This request was previously conveyed to the Committee through an email to [redacted] the Federal Circuit's Chief of Staff, on June 9, 2025. The email was acknowledged the same day, along with the confirmation that it was sufficient to reserve Judge Newman's rights under Rule 15(d).