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NCLA Asks *en Banc* D.C. Circuit to Rehear Federal Circuit Judge Newman’s Unlawful Suspension Case

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

Washington, DC (September 22, 2025) – The New Civil Liberties Alliance has filed a [petition](#) for the U.S. Court of Appeals for the D.C. Circuit to rehear *en banc* the [Newman v. Moore](#) lawsuit challenging the ongoing illegal suspension of Federal Circuit Judge Pauline Newman. A D.C. Circuit panel dismissed NCLA’s lawsuit against the suspension on jurisdictional grounds, based on its interpretation of the D.C. Circuit’s 2001 ruling in *McBryde v. Committee to Review Circuit Council Conduct & Disability Orders of the U.S. Judicial Conference*; however, the panel opined that *McBryde* was probably wrongly decided and all but invited a petition for rehearing *en banc*. Representing Judge Newman, NCLA asks the *en banc* Court to overrule *McBryde*, reach the merits of her case, and speedily end the interminable inquiry that has functionally removed a sitting Article III judge from office.

As the panel realized, the *McBryde* Court wrongly found that the Disability Act prevents any courts from hearing constitutional arguments challenging Judicial Council suspension orders and other disciplinary actions against judges. The panel wrote that the 2001 decision “misapplied” the Disability Act to deny courts’ jurisdiction over cases like this one, “relied on a potentially strained reading of the relevant legislative history,” and “raise[d] constitutional concerns” in itself. *McBryde* cannot be reconciled with other D.C. Circuit decisions, standing alone to indefensibly stop the Court from considering the strong case in favor of restoring Judge Newman to the bench.

Judge Newman’s indefinite, complete suspension is unprecedented in American judicial history. It violates her right to due process of law because her colleagues are serving as prosecutors, witnesses, and judges in her case. Without due process, the Judicial Council of the Federal Circuit, led by Chief Judge Moore, indefinitely removed Judge Newman from hearing new cases in March 2023 *before* ever beginning any formal investigation into her fitness for office, violating the Judicial Conduct and Disability Act the Council purported to apply. The Judicial Council suspended her for a year in September 2023 and has since issued two more one-year suspensions. Her suspension now exceeds in length even sanctions imposed on judges who committed very serious misconduct.

Suspending an Article III judge from all judicial functions of her office is unconstitutional. To the extent that the Disability Act’s provision permitting administrative suspensions is constitutional at all, it only authorizes a time-limited suspension with definite end-date. Throughout the investigation and suspension campaign, the Judicial Council changed its rationale (from disability to non-cooperation) and even altered the allegations it leveled, with an apparent predetermined aim of keeping Judge Newman off the bench. But preventing her from serving in her constitutionally appointed role poses a dire threat to judicial independence and infringes the separation of powers.

NCLA released the following statements:

“NCLA is glad the panel signaled the need for *en banc* review in this case, and we trust that the full court will grant that review. It would be a travesty of justice to never have an Article III court reach the merits of Judge Newman’s highly meritorious case.”

— **Mark Chenoweth, President, NCLA**

“We are taking the D.C. Circuit panel up on its virtual invitation to review the case *en banc*. Judge Newman has been kept from her duties for more than 2 years unconstitutionally, and it should end.”

— **John Vecchione, Senior Litigation Counsel, NCLA**

“The D.C. Circuit should grant Judge Newman an *en banc* hearing, decide her case on the merits, and restore her to her rightful place on the bench as a life-tenured Article III judge.”

— **Andrew Morris, Senior Litigation Counsel, NCLA**

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

ABOUT NCLA

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

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