

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

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

IN RE COMPLAINT NO. 23-90015

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

July 31, 2023

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

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III. RECOMMENDED SANCTION 109

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

PER CURIAM.

REPORT AND RECOMMENDATION

On March 24, 2023, this Special Committee (Committee) was appointed to investigate, and to report its findings and recommendations with respect to, a complaint identified against Judge Newman raising concerns that she may suffer from a mental or physical disability that renders her unable to discharge the duties of her office. Judge Newman is 96 years old and has served with distinction as an active judge on this Court for 39 years. She has been a valued and respected colleague, and her many contributions to the Court, to the patent system, and to the law cannot be denied. The question presented to this Committee, however, is not whether Judge Newman has had an extraordinary career or whether she has made important contributions to the law. Instead, this Committee is charged with the unenviable task of investigating—in light of her extraordinary delays in issuing opinions and concerns about her mental fitness raised by numerous interactions with court staff—whether Judge Newman now suffers from a disability that renders her no longer capable of performing her job as a judge.

This difficult inquiry, which it is the Committee's duty to conduct under the governing statute and rules, has been frustrated from the outset by Judge Newman's consistent refusal to cooperate. The Committee repeatedly ordered Judge Newman to undergo a neurological evaluation and neuropsychological testing ("medical examinations") by professionals selected by the Committee and to provide certain medical records, and also requested that she sit for an interview with the Committee. Even when the Committee recounted extensive evidence (described below) raising reasonable concerns that Judge Newman might suffer from a cognitive or physical impairment and reiterated (in some instances for the *third time*) the need for medical examinations and medical records, and the advisability of an interview, Judge Newman still refused to cooperate on all fronts.

As a result, this investigation was amended to include the question whether Judge Newman's refusal to cooperate constituted misconduct. The Committee determined that Judge Newman's refusal to cooperate "significantly impair[ed] the Committee's ability to make a fully informed assessment of whether Judge Newman suffers from a disability." June 1 Order at 2. Under the Judicial Conduct and Disability Act (Act), the Committee is charged with providing the Federal Circuit Judicial Council ("Judicial Council") with a "comprehensive written report" including "findings" on the ultimate question of disability. 28 U.S.C. § 353(c). Because the Committee determined Judge Newman's non-cooperation significantly impaired its ability to make a fully informed assessment of the disability at issue, it *narrowed* the focus of its investigation (at least at this time) to address *solely* the question whether Judge Newman's failure to cooperate constitutes misconduct under the rules adopted by the Judicial Conference to implement the Act. June 1 Order at 2–3. Rule 4(a)(5) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings

(Rules) expressly provides that “[c]ognizable misconduct includes refusing, without good cause shown, to cooperate in the investigation of a complaint.”

For the reasons explained below, the Committee finds that Judge Newman has not shown good cause for refusing to cooperate with the Committee’s orders and that her failure to cooperate constitutes misconduct under Rule 4(a)(5).

One basis for the concern about disability that justifies the orders for medical examinations and records is incontrovertible data from the Clerk’s Office establishing that Judge Newman (despite having a significantly reduced workload) is unable to complete her work in a timely fashion. From October 2021 through March 2023, Judge Newman authored (including her dissents) less than half the opinions of an average active judge (28 compared to 61 for an average judge) and her opinions took approximately four times as long to issue (199 days compared to 53 days for an average active judge). And from May 2022 through April 2023, Judge Newman sat on half as many cases as her colleagues (65 compared to 129 for an average active judge). She took four times as long to write half the opinions while sitting on half the number of cases as her colleagues. Moreover, despite having no new cases assigned for what is now six months (April through September 2023), not sitting on motions panels, and having three law clerks and a judicial assistant, Judge Newman still has a backlog of seven opinions that have not issued, and they now average 230 days old.

A second basis for the disability concerns justifying the orders at issue is the extensive evidence gathered from more than 20 interviews with court staff. These affidavits detail staff reports of deeply troubling interactions with Judge Newman that sadly suggest significant mental deterioration including memory loss, confusion, lack of comprehension, paranoia, anger, hostility, and severe agitation.

These affidavits were provided to Judge Neman on June 1 and the details in them have not been disputed by Judge Newman. Instead, Judge Newman dismissively characterizes the concerns raised by staff as “minutia[e]” and “petty grievances.” July 5 Brief at 15. We strongly disagree. The events staff have described raise concerns about serious dysfunction on Judge Newman’s part that amply warrant the orders of medical examinations, records, and requests for an interview.

The staff have reported that Judge Newman has been unable to remember from day to day how to perform simple tasks, such as bringing the standard materials (*e.g.*, briefs and bench memos) to court, logging onto the computer network, and locating files. The staff also report that, when help has been offered on these matters, she has appeared “paranoid” and insisted that her devices are hacked and bugged, sometimes by the Court itself. She has appeared unable to comprehend or recall explanations that are given to her, and staff have had to address the same matters over and over with her. Staff across the Court have reported exchanges with Judge Newman in which they have had to answer the same questions from her repeatedly in the same or subsequent days (many recorded in email exchanges), because she has not remembered or understood the answers.

Staff have also raised serious concerns about Judge Newman’s ability to manage her chambers. One of Judge Newman’s clerks apparently has been assigned personal tasks such as grocery shopping and driving Judge Newman to her medical appointments. That clerk has felt empowered to call Judge Newman’s judicial assistant in the middle of the night to demand personal services for herself, such as wake-up calls. When this practice became intolerable and was raised in the Court’s Employment Dispute Resolution (EDR) process, the clerk in question refused to agree to halt her midnight calls *even temporarily*. Judge

Newman not only failed to take any steps to rectify the matter as supervisor of the employee; she sent an email to roughly 95 court staff exposing details of the confidential EDR matter. When the same clerk, represented by counsel, was asked in this investigation about exactly what work she did in Judge Newman's chambers, she invoked the Fifth Amendment to avoid incriminating herself.

When Judge Newman's judicial assistant felt that Judge Newman was retaliating against him for raising matters in the EDR process (including the conduct of the clerk noted above) and, as part of the EDR process, secured an alternative work arrangement that allowed him to use a work-station outside her chambers, she ignored that temporary resolution. She threatened to have him forcibly removed from the building and arrested and then gave him an ultimatum: return to chambers immediately or she would accept his resignation—*i.e.*, he would lose his job.

When the judicial assistant decided he could take no more, he left her chambers permanently and took on a new assignment within the Court, and his computer was moved with him—which is standard practice, computers being assigned to and moving with individuals within the Court. Judge Newman became convinced that his computer had been stolen along with information from her chambers. No matter how many times the situation has been explained to her by IT staff and the Clerk of the Court (all her chambers information always was stored and remains stored on her network shared drive, not on the hard drive of that computer), she has repeatedly made accusations about a stolen computer with her chambers' information. In one recent interaction, IT staff reported, an "angry" Judge Newman "was pacing back and forth" and "mumbling about how her computer and phone had been taken away from her" and insisted in an "angry voice" that she wanted her "twenty-year-old computer and phone back."

Staff have variously described Judge Newman in their interactions with her as “aggressive, angry, combative, and intimidating”; “bizarre and unnecessarily hostile”; making “personal accusations”; “agitated, belligerent, and demonstratively angry”; and “ranting, rambling, and paranoid.” Interactions with Judge Newman have become so dysfunctional that the Clerk of the Court has advised staff to avoid interacting with her in person or, if such interaction is unavoidable, to bring a co-worker with them. The evidence cannot be dismissed as involving only “minutia[e]” or “petty grievance,” and it does not evince merely bad behavior; it raises serious concerns about Judge Newman’s cognitive functioning.

For these reasons, the Committee was amply justified in issuing its orders demanding medical examinations and medical records, and requesting an interview. And Judge Newman’s failure to cooperate with the Committee’s orders for medical examinations, medical records, and an interview has prevented the Committee from completing its central task—namely, reaching a conclusion about whether Judge Newman suffers from a disability. She has offered no adequate justification for this failure to cooperate. Her conduct, we conclude, is “prejudicial to the effective and expeditious administration of the business of the courts.” 28 U.S.C. § 351(a).

Our conclusion is supported by the holding of the Committee on Judicial Conduct and Disability of the Judicial Conference of the United States (the “JC&D Committee”) in the *Adams* case. See *In re Complaint of Judicial Misconduct*, C.C.D. No. 17-01 (U.S. Jud. Conf. 2017) (“*Adams*”). There, a judge subject to an investigation for a possible disability refused to comply with an order to undergo a mental health examination by a medical professional of the special committee’s choosing. The JC&D Committee of the Judicial Conference held that the judge’s “failure to cooperate through his repeated refusals to

undergo the mental health examination impeded the Judicial Council's ability to conduct a thorough and conclusive investigation," and "[a]s such, it was conduct 'prejudicial to the effective and expeditious administration of the business of the courts.'" *Id.* at 29–30 (quoting 28 U.S.C. § 351(a)). We find the same here.

Judge Newman has no sound defense of her refusal of the medical examinations and records. In particular, she has not remotely shown the bases for the Committee's demands for medical examinations and records to be insufficient. The statistics concerning Judge Newman's case handling unmistakably show Judge Newman's recent inability to keep up with the work required of an active judge on our Court. And the concerns about disability raised by the staff accounts are not answered by the dismissive characterization of those accounts as involving only "minutiae[e]" and "petty grievances." July 5 Brief at 15. That response just ignores how those accounts directly evince cognitive problems on Judge Newman's part. It also treats as beneath notice the considerable toll on staff reflected in the accounts: Judge Newman's actions wore on her judicial assistant's mental and physical health to the extent that he sought help from medical professionals; one of her law clerks reported that working in her chambers "was taking a toll on my mental health"; the Clerk of the Court has reported that Judge Newman's repeated accusations have caused him "emotional stress and discomfort, including loss of sleep and heightened anxiety"; and IT staff have reported being left "shaken and upset" by the interactions with an "angry" Judge Newman. That Judge Newman has chosen to respond to the staff reports in the way she has, in the Committee's view, only underscores that there are reasonable grounds to have concerns about her cognitive state.

For the reasons set out in detail below, we reject the various arguments Judge Newman has offered to justify

her refusal to cooperate. Among other things, Judge Newman has argued that this proceeding violates due process because the Chief Judge both initiated the proceeding and serves as a decisionmaker and because judges on the Judicial Council may be witnesses, and she has claimed that the actions of the Judicial Council and the Committee show bias against her. She has also submitted a report from her own neurologist, which she claims obviates the need for any further medical examinations. None of these arguments has merit. Some amount to challenges to the fundamental choices that Congress and the Judicial Conference built into the statute and governing rules. And as for Judge Newman's neurologist's report, it is settled law that the Committee may insist on an examination by independent professionals chosen by the Committee. In any event the report Judge Newman offers relied upon the administration of a partial ten minute test in which the doctor reported that Judge Newman failed 80% of the memory related questions and Judge Newman refuses to disclose the materials which were provided to the doctor in forming his opinion. Finally, the scoring of the test has inconsistencies on its face making it clear that it cannot be relied upon.

We conclude that Judge Newman's action constitutes a refusal to cooperate that is serious misconduct. Judge Newman has prevented the Committee from completing its assigned task under the Act. Thwarting the process Congress created for determining whether a life-tenured judge suffers from a disability is a serious matter.

The Committee's role under the Act is essential for the proper functioning of the judiciary. As relevant here, the Act creates a mechanism, important in a system that provides judges life tenure to ensure independence, to address the unfortunate reality that some judges may no longer be fit to perform the duties of their office. The Act gives the judiciary the responsibility for regulating itself in that regard through investigations such as this. The obligation is

owed to the litigants and attorneys who come before the Court, the employees who work for the Court, and the general public who must have justified confidence in the competence of the judiciary.

Just as this Committee has a duty to carry out its responsibilities under the Act, all judges have an obligation to cooperate with proceedings under the Act to ensure that self-policing by the judiciary can function properly. Here, to carry out its responsibilities, given the ample bases for concern about disability, the Committee demanded medical examinations and records to address the serious disability issue. Judge Newman, as a member of the judiciary, had a duty to undergo the examinations and provide the records to make the self-policing mechanism work. To refuse to do so here without adequate justification, as Judge Newman has done, is to bring the statutory mechanism for addressing disability to a grinding halt and thus to undermine the interests of litigants, employees, and the public in having that mechanism work.

Under the circumstances, therefore, the Committee believes that Judge Newman's actions thwarting this investigation constitute a serious form of misconduct. That misconduct, which is continuing, cannot be met with a minor sanction that a life-tenured judge might ignore. Instead, the Committee believes that the only sanction that would appropriately address this serious matter is the suspension of all case assignments for a fixed time period of one year, subject to consideration of renewal if the refusal continues after that time and to consideration of modification or rescission if justified by an end of the refusal or by other changes. This sanction is supported by *Adams*, where the JC&D Committee explained that, if the subject judge continued to "refuse to submit to the mental health examination" that had been ordered, "sanctions for [his] continued failure to cooperate—including the prohibition of the assignment of new cases on a temporary basis for a

time certain—may be warranted.” *Adams*, C.C.D. No. 17-01, at 39.

Accordingly, as a sanction for Judge Newman’s misconduct in refusing to cooperate with the investigation, the Committee recommends that the Judicial Council preclude Judge Newman from sitting on any new cases (panel or en banc)¹ for one year or until she complies with the Committee’s outstanding orders such that the inquiry into whether she suffers from a disability may be completed.

I. PROCEDURAL BACKGROUND AND COURSE OF THE INVESTIGATION

On March 24, 2023, Chief Judge Moore entered an order pursuant to Rule 5(a) of the Rules identifying a complaint concerning Judge Newman based on information providing probable cause to believe that Judge Newman “has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts’ and/or ‘is unable to discharge all the duties of office by reason of mental or physical disability.” March 24 Order at 1 (quoting 28 U.S.C. § 351(a)). The order explained that the Chief Judge’s decision to identify a complaint was based on information provided by judges and court staff raising concerns (i) that Judge Newman was responsible for extensive delays in resolving cases and appeared unable to complete her opinions in a timely fashion, and (ii) that Judge Newman appeared to suffer from “impairment of cognitive abilities (i.e., attention, focus, confusion and memory).” *Id.* at 2. The order noted that, after suffering a heart attack in June 2021, Judge Newman had her workload reduced by being taken off motion panels and having her sittings reduced. *Id.* at 1. In May 2022, she suffered a fainting spell and was unable to walk unassisted, after which her

¹ This includes en banc matters in which oral argument has yet to occur.

workload was further reduced. Yet, despite the reduced caseload, Judge Newman experienced extraordinary delays in issuing opinions.

The order further recounted that, as permitted under Rule 5, after receiving such information about Judge Newman, the Chief Judge had conducted a limited inquiry. *See id.* at 2.² That inquiry provided substantial additional information concerning Judge Newman’s exceptional delays in resolving cases and information from staff describing alleged behavior by Judge Newman in her interactions with staff that raised concerns about Judge Newman’s cognitive state. *See id.* at 2–5. Again, acting pursuant to Rule 5, prior to identifying a complaint, the Chief Judge sought to pursue an “informal resolution”³ with Judge Newman. The Chief Judge met with Judge Newman and explained the concerns that had been raised about Judge Newman’s delays in resolving cases and her mental fitness. On March 17, the Chief Judge provided Judge Newman a copy of the order identifying a complaint that would be issued if an informal resolution of the concerns that had been raised could not be reached. Judge Newman refused to reach any informal resolution. Accordingly, the Chief Judge issued the order identifying a complaint on March 24, 2023.

² *See* Rule 5(a) (“When a chief judge has information constituting reasonable grounds for inquiry into whether a covered judge has engaged in misconduct or has a disability, the chief judge may conduct an inquiry, as he or she deems appropriate, into the accuracy of the information . . .”).

³ *See* Rule 5(a) (“A chief judge who finds probable cause to believe that misconduct has occurred or that a disability exists may seek an informal resolution that he or she finds satisfactory.”).

In a separate order entered on March 24, 2023, pursuant to Rule 11, Chief Judge Moore appointed a Special Committee to investigate the complaint and prepare a report and recommendation for the Judicial Council. Pursuant to Rule 12(a) and 28 U.S.C. §§ 353(a)(1) & 363, Chief Judge Moore was required to make herself a member of the Committee. In addition, she appointed Judges Prost and Taranto. Notice of the order appointing the Committee was provided to Judge Newman as required under Rule 11(g).⁴

The Committee immediately undertook interviews with court staff to gather relevant information concerning both Judge Newman's delays in resolving cases and her interactions with court staff. In addition, in April 2023, pursuant to Rule 13(a) & (c), the Committee retained the services of Dr. [REDACTED] to serve as an expert consultant to the Committee. Dr. [REDACTED] professor of psychiatry at the University of Colorado and a board-certified psychiatrist, was recommended to the Committee by the Administrative Office of the United States Courts.

On April 6, an order was entered pursuant to Rule 5 expanding the scope of the Committee's investigation based on a referral from the Committee pursuant to Rule

⁴ Separate notice to Judge Newman pursuant to Rule 11(f) *before* the appointment of the Committee was not required because, as noted above, Judge Newman had already been provided a copy of the order identifying the complaint on March 17 during the limited inquiry conducted by the Chief Judge. *See* Rule 11(f) ("Before appointing a special committee, the chief judge must invite the subject judge to respond to the complaint either orally or in writing *if the judge was not given an opportunity during the limited inquiry.*" (emphasis added)).

13(a) presenting new information. As recounted in the April 6 Order, the information involved a situation in which one of Judge Newman's clerks had been contacting Judge Newman's judicial assistant in the middle of the night on both work matters and personal matters, and the judicial assistant sought informal resolution through the Court's EDR plan. When the Chief Judge emailed Judge Newman about the situation as the supervisor of the employees involved, Judge Newman responded with an email copying the "All Judges" list, thereby disclosing the nature of the confidential employment dispute and the identities of the employees involved not only to all judges on the Court, but also to chambers staff and other employees (95 individuals in all). April 6 Order at 5. Disclosing the EDR matter in that fashion was a clear violation of the confidentiality provisions governing the EDR process. Based on a finding that there was probable cause to believe that Judge Newman's disclosure of a confidential employment dispute matter constituted misconduct, the April 6 Order expanded the scope of the investigation to include this newly identified matter.

On April 7, after the Committee had conducted multiple interviews with court staff and consulted with Dr. [REDACTED] concerning the testimony gathered in these interviews, the Committee issued an order determining that it was necessary for the Committee's investigation to have Judge Newman undergo a neurological examination and full neuropsychological testing to determine whether she suffered from a disability. The Committee had consulted with Dr. [REDACTED] and described to him some of the information about Judge Newman's delays in issuing opinions and about her interactions with staff, and Dr. [REDACTED] provided his view that these medical examinations were necessary to ascertain with a reasonable certainty whether a disability existed. As the April 7 Order recounted, Dr. [REDACTED] had identified a qualified neurologist and a qualified

neuropsychologist to perform the examinations on an expedited basis in the Washington, DC area. April 7 Order at 2. The order provided the names of these specialists. *Id.* It also noted that “Dr. ██████ is also available to speak to Judge Newman to answer any questions about the nature of the examination and testing” and provided Dr. ██████’s telephone number so that Judge Newman or someone acting on her behalf could contact Dr. ██████ directly. *Id.* The order expressly cautioned that refusal to comply without good cause shown could result in the investigation being expanded to consider whether failure to cooperate constituted misconduct under Rule 4(a)(5). *Id.* at 2–3.

Judge Newman failed to respond to the April 7 Order (or to request an extension of time to respond) by the April 11, 2023 deadline set by the Committee.

On April 13, pursuant to Rule 13(a) at the Committee’s request, the scope of the investigation was expanded to include whether Judge Newman’s failure to cooperate concerning the ordered medical examinations constituted misconduct. April 13 Order at 2. Judge Newman had also refused to accept service of orders issued by the Committee and instructed the mailroom at her residence to refuse to accept the orders. At the Committee’s request, the scope of the investigation was also expanded to include whether failure to cooperate with the investigation in that respect constituted misconduct. *Id.*

On April 17, the Committee issued an order seeking certain medical records and an interview with Judge Newman. Dr. ██████ had advised the Committee that Judge Newman’s medical records related to an alleged cardiac incident and episodes of fainting could shed light on a condition relevant to assessing her cognitive state. Accordingly, the order required Judge Newman to provide medical records related to the health incidents described in the March 24 Order (*i.e.*, what the March 24 Order described as a

heart attack and an incident of fainting). April 17 Order at 1. Second, the order required Judge Newman to provide records “of any treatment or consultation in the last two years regarding attention, focus, confusion, memory loss, fatigue or stamina.” *Id.* at 2. Third, the order requested that Judge Newman sit with the Committee for a videotaped interview. *Id.* The order proposed that Judge Newman should provide the medical records by May 5, 2023 and required Judge Newman by April 11 to inform the Committee whether she would supply the medical records and sit for an interview or to “provide good cause why an extension of time is needed to respond to this [o]rder.” *Id.*

On April 20, pursuant to a request from the Committee under Rule 13(a), an order was entered expanding the scope of the investigation to include whether three additional incidents constituted misconduct by Judge Newman. Because, as described below, the focus of this Report and Recommendation has been narrowed to address whether Judge Newman’s refusal to cooperate with the Committee’s orders for medical examinations and records and an interview constitutes misconduct, these three incidents are not described in detail here. To the extent the facts are relevant to the Committee’s findings, they are described below. *See infra* pp. 34–36, 39–46. In brief, the first matter involved Judge Newman’s allegedly abusive and retaliatory conduct towards her judicial assistant [REDACTED],⁵ after he had raised concerns about Judge Newman disclosing confidential information and after he had sought resolution through the Court’s EDR program of his concerns about his treatment by another member of Judge Newman’s staff and retaliatory actions by Judge Newman. The series of events included [REDACTED] [Judicial Assistant’s]

⁵ [REDACTED] was a paralegal performing the functions of what we typically refer to as a judicial assistant. He will be referred to here as a judicial assistant throughout.

workstation being temporarily moved outside Judge Newman's chambers (at his request) as interim relief pursuant to his EDR complaints; Judge Newman informing other staff that she intended to have [REDACTED] [Judicial Assistant] arrested or removed from the building; and then Judge Newman refusing to respect that interim resolution and ordering [REDACTED] [Judicial Assistant] to return to chambers or be deemed to have resigned (thereby terminating his employment). *See* April 20 Order at 2–6. The second matter involves concerns raised by one of Judge Newman's law clerks who told Judge Newman that he was not comfortable working on her personal defense in this matter; that working in her chambers was taking a toll on his mental health; and that he wished to be loaned out to another chambers. Judge Newman's response was an ultimatum to him to stay or resign. *Id.* at 6–7. The third matter involved Judge Newman's interactions with the Court's IT Department in which she accused the Court of deleting her emails and files and hacking her computer and sounded "agitated, paranoid and upset." *Id.* at 8.

On April 21, 2023, counsel for Judge Newman filed a letter brief ("April 21 Letter"). This was the first time Judge Newman responded, in any way, to the Committee's multiple prior orders. In the April 21 Letter, Judge Newman indicated that she might be willing to cooperate with the Committee's orders regarding medical examinations, medical records, and an interview, but insisted that the Committee first address a request by Judge Newman seeking to have this proceeding transferred to another circuit. Judge Newman argued primarily that members of the Committee and of the Judicial Council would likely be

witnesses at any evidentiary hearing in this matter and thus could not also act as adjudicators. April 21 Letter at 3.⁶

On May 3, the Committee issued an order responding to the April 21 Letter. Because only the Chief Judge or the Judicial Council may request that the Chief Justice transfer a matter to another circuit pursuant to Rule 26, the Committee's order reflected the Chief Judge's action on the transfer request. *See* May 3 Order at 9 n.1. The order explained that, under the Rules, a discretionary transfer may be considered only in "exceptional circumstances," *id.* at 10 (quoting Rule 26), and that the factors contemplated by that standard were not present in this matter as things stood. With respect to Judge Newman's assertion that judges on the Committee and the Judicial Council "likely" would be called as witnesses at any evidentiary hearing, the order concluded that concern was premature. The Committee explained that it was proceeding in a deliberate, stepwise fashion, and that the most important next stage in the proceeding would be receiving the results of the medical examinations and the medical records, which would likely determine the future course of the proceeding. *Id.* at 12–13. The Committee had determined that the medical examinations and medical records were a vital next step based on (i) data from the Clerk's Office related to Judge Newman's caseload and delays; (ii) the growing body of evidence from staff about their concerning interactions with Judge Newman; and (iii) the recommendation of the Committee's consulting expert, Dr. ██████—*i.e.*, without relying on any information gathered from judges.

⁶ The April 21 Letter also raised a matter outside the purview of the Committee. On March 8, 2023, the Judicial Council had voted unanimously to preclude the assignment of new cases to Judge Newman. In her April 21 Letter, Judge Newman challenged that action as unlawful.

Indeed, the Committee noted that the extensive evidence the Committee had already gathered (and continued to receive) related to Judge Newman's increasingly confused, erratic, and abusive interactions with staff meant that the interview, medical examinations, and records would "serve an important gating function in determining" what if any further evidence would be needed. *Id.* at 13. Judge Newman's assertion that she would insist on calling judges as witnesses anyway raised a possible future issue that the Committee did not need to anticipate at this fact-gathering stage of the investigation. Accordingly, the order denied the request for a transfer without prejudice to renewing the request after Judge Newman had complied with the Committee's order regarding medical examinations and medical records. *Id.* at 14.

In the same order, the Committee also reissued its orders regarding medical examinations and medical records. *Id.* at 13–14. The May 3 Order described additional information that the Committee had gathered establishing a reasonable basis for requiring the medical examinations and the production of medical records. It also established a new deadline of May 10 for Judge Newman to inform the Committee whether she would comply with the Committee's orders. *Id.*

The Committee had also referred Judge Newman's request for a transfer to the Judicial Council. On May 3, the Judicial Council issued its own order denying the transfer request "without prejudice to re-filing after Judge Newman has complied with the Special Committee requests for medical records and the evaluation and testing ordered by the Special Committee." May 3 Judicial Council Order.

On May 10, 2023, Judge Newman submitted a letter brief ("May 10 Letter") objecting to the Committee's May 3

Order.⁷ With respect to the medical examinations, Judge Newman raised three concerns. First, she suggested that she should be permitted to choose the professionals who would conduct any examinations. Second, although the Committee had provided Judge Newman with Dr. ██████'s contact information more than a month earlier on April 7 and had explained that “Dr. ██████ is . . . available to speak to Judge Newman to answer any questions about the nature of the examination and testing,” April 7 Order at 2, Judge Newman—without ever contacting Dr. ██████—complained that the proposed testing was of “unknown duration and scope.” May 10 Letter at 4. Third, Judge Newman objected to the lack of any defined limitation on the use of the examination results. *Id.* As for the medical records, Judge Newman argued that they were irrelevant and that the Committee had not adequately explained how they could be relevant to its inquiry. *Id.* at 3–4. She did not assert that the records sought by the Committee did not exist. Judge Newman did not raise any specific objection to the Committee’s request for an interview. The May 10 Letter also reiterated Judge Newman’s request that the proceeding be transferred to another circuit.⁸ *Id.* at 5–6.

On May 16, 2023, the Committee issued an order responding to Judge Newman’s objections. With respect to the medical examinations, the order clarified that the examinations would be entirely non-invasive and would consist of an in-person examination by a neurologist lasting

⁷ Judge Newman also filed a complaint in federal district court against the members of the Committee in their official capacity and the entire Judicial Council. *See Newman v. Moore*, No. 1:23-cv-01334-CRC, Dkt. 1 (D.D.C. May 10, 2023).

⁸ It also repeated her request that the Judicial Council immediately restore her to the rotation for new case assignments. *See supra* n.6.

30–45 minutes and a full battery of neuropsychological testing with a neuropsychologist, which would involve an interview and a series of tests involving answering questions and performing tasks “designed to test all major areas of neurocognitive functioning.” May 16 Order at 21–22. That testing could take up to six hours. The Committee agreed that, if the neurologist believed that any additional tests (such as blood work or imaging studies) were required, “such testing can be the subject of further discussion between the Committee and Judge Newman after th[e] initial examination has taken place.” *Id.* at 22. In response to Judge Newman’s concerns about the use that would be made of the examination results, the Committee explained that the results would be used solely to aid the Committee in its determination of whether Judge Newman has a disability and for the preparation of its report and recommendation to the Judicial Council. *Id.* at 23.

With respect to medical records, the May 16 Order “more clearly define[d] [the] requests for medical records.” *Id.* at 2. In addition to records related to any treatment concerning “mental acuity, attention, focus, confusion, memory loss, fatigue, or stamina,” the Committee explained that it sought records “that relate to Judge Newman’s alleged cardiac issues and fainting episode.” *Id.* at 4; *see also id.* at 5 (seeking records “concerning her apparent cardiac event and a fainting episode”). The order explained that the Committee’s consultant, Dr. ██████, had advised that “medical records related to a cardiac event and a fainting episode . . . may very well shed light on the observed changes in Judge Newman’s behavior” that raised concerns about her cognitive capacity. *Id.* at 5.

To address Judge Newman’s concerns about privacy related to the medical records, the Committee clarified that the medical records should be provided solely to the neurologist the Committee had selected to evaluate Judge Newman and not to the Committee itself. *Id.* at 6.

In addition, because the Committee had continued to gather additional information since its May 3 Order, the Committee once again summarized the still growing body of information providing a reasonable basis for concern about Judge Newman's cognitive state and supporting the Committee's orders. By the time of the May 16 Order, the Committee had conducted more than 20 interviews with staff members at the Court.

Significantly, because staff members provided extensive evidence raising concerns about Judge Newman's mental state, and because their continuing interactions with her provided additional evidence on an almost daily basis, the Committee had no need to conduct—and never did conduct—any interviews with judges on the Court. The course of the Committee's inquiry indicated that grave concerns about Judge Newman's possibly deteriorating mental state were being demonstrated on an ongoing basis in her interactions with court staff. Accordingly, the Committee's May 16 Order was based solely on (i) data from the Clerk's Office concerning Judge Newman's caseload and delays in issuing opinions; (ii) interviews, affidavits, and one deposition provided by court staff members; and (iii) consultations with Dr. [REDACTED].

The Committee concluded the May 16 Order by: (i) once again requiring (for the third time) that Judge Newman undergo the required medical examinations; (ii) once again requiring (for the third time) that she produce the medical records; and (iii) once again requesting (for the second time) that she sit for an interview with the Committee. May 16 Order at 25. The order did not address Judge Newman's request that she be restored to the rotation of sittings because the Committee had no authority to provide that relief, which could be granted only by the Judicial Council.

On May 25, 2023, Judge Newman responded stating that she would not comply with the May 16 Order (“May 25 Letter”). Judge Newman indicated that she would comply with the Committee’s orders only if (i) the Judicial Council immediately restored her to the rotation of assignments for new cases *and* (ii) if “this matter is promptly transferred to a judicial council of another circuit.” May 25 Letter at 3 (emphasis removed). In addition, Judge Newman objected for the first time that the “level of expertise” of the physicians chosen by the Committee to conduct the medical examinations was unknown to her and that the “expertise of these physicians has not been subject to *voir dire* nor to the analysis required by *Daubert v. Merrell Dow Pharma.*, 509 U.S. 579 (1993).” *Id.* at 2.

On May 26, at the request of the Committee pursuant to Rule 13(a), an order was entered expanding the scope of the investigation to include the question whether Judge Newman’s refusal to cooperate with the Committee’s May 16 Order constituted misconduct.

On June 1, the Committee determined that Judge Newman’s refusal to comply with the Committee’s orders concerning the medical examinations, medical records, and an interview significantly impaired the Committee’s ability to make an informed assessment of whether Judge Newman suffers from a disability and to make a recommendation to the Judicial Council on that issue. *See* June 1 Order at 2–3. Accordingly, the Committee decided to narrow the focus of its investigation to address solely the question whether Judge Newman’s refusal to cooperate with the Committee’s orders constituted misconduct. *Id.* at 3–4; *see also* Rule 4(a)(5) (“Cognizable misconduct includes refusing, without good cause shown, to cooperate in the investigation of a complaint or enforcement of a decision rendered under these Rules.”). Given that narrowed focus, the Committee determined, and Judge Newman agreed, that no evidentiary hearing under Rule 14 would be required because

the misconduct issue could be determined based on the paper record showing Judge Newman's responses to the Committee's orders and because there were no percipient fact witnesses with relevant evidence on that issue. *See* June 1 Order at 4–5; June 15 Letter at 3 (“We agree with this assessment.”).⁹

The Committee ordered Judge Newman to submit a brief, limited to the misconduct issue, by July 5, and it set oral argument to address the same issue to occur on July 13. June 1 Order at 6. Recognizing that Judge Newman might seek to argue that the Committee lacked a reasonable basis for concern about Judge Newman's alleged disability, the Committee also provided Judge Newman all of the witness affidavits and the single deposition transcript that the Committee had gathered by June 1. *Id.* at 5. Because witnesses continued to come forward to volunteer information to the Committee after it issued its May 16 Order, the material provided to Judge Newman included affidavits dated after May 16.

⁹ On June 5, the Judicial Council, treating Judge Newman's requests that she be restored to the rotation of new case assignments, *see supra* nn. 6, 8, as a request for reconsideration of the Council's March 8 order, issued an order considering *de novo* whether Judge Newman should be suspended from new case assignments. The Judicial Council explained that, under its authority under 28 U.S.C. § 332(d), it was suspending Judge Newman from the rotation for new case assignments based on her lengthy delays in issuing opinions. June 5 Judicial Order at 4–5. As the Council explained, it was “concerned that assigning additional cases to Judge Newman now will only interfere with her ability to clear her current backlog and exacerbate delays in her already long-delayed opinions.” *Id.* at 4.

The Committee has determined that it is appropriate to consider these post-May 16 materials in assessing whether Judge Newman's failure to comply with the May 16 Order constitutes misconduct. First, nearly all of the information contained within them had been communicated to the Committee prior to May 16. Second, it was only on June 1 that the Committee ordered Judge Newman to explain why her actions did not constitute misconduct and Judge Newman was given notice that "[t]hese materials . . . provided the basis for the Committee's conclusion that Judge Newman should be ordered to undergo the examinations and to provide medical records." *Id.* Additionally, the Committee expressly told Judge Newman the materials could be relevant to any argument she may wish to make in her brief or at oral argument about whether the Committee had a reasonable basis to order the medical examinations and records. *Id.* And as of June 1, when the Committee provided Judge Newman with the affidavits and deposition transcript, she still could have changed course and cooperated with the orders. Judge Newman thereby had notice and the opportunity either to reconsider her position based on the evidence available to the Committee, or to respond to all the material the Committee had in its possession supporting the requirements it was imposing on Judge Newman. Judge Newman has done neither. Instead, Judge Newman continues to refuse to cooperate with the Committee's investigation and has dismissed the allegations in these affidavits as "petty grievances" and "minutia[e]." July 5 Brief at 15. Moreover, because Judge Newman has an ongoing obligation to cooperate with the Committee's investigation, her ongoing conduct is relevant to the Committee's basis to continue to require medical examinations and records and for assessing Judge Newman's

arguments for good cause as to why she has not, to date, cooperated with the investigation.¹⁰

Judge Newman submitted her brief on July 5, and on July 13 the Committee heard argument.¹¹

This Report and Recommendation follows.

II. RECOMMENDED FINDINGS AND CONCLUSIONS

Despite the lengthy procedural history that brought the Committee's investigation to this point, the issue currently before the Committee is quite narrow. This Report and Recommendation focuses solely on the question whether Judge Newman's failure to comply with the Committee's orders (i) requiring her to undergo medical examinations with professionals chosen by the Committee; (ii) requiring her to produce certain medical records to those same professionals; and (iii) requesting that she sit with

¹⁰ Though we see no error in considering all the evidence provided to Judge Newman on June 1, as she had notice and multiple opportunities to respond to it, even if the Committee excluded the staff-reported interactions that occurred between May 16 and June 1, the Committee would reach the same conclusion: that it had a reasonable basis for requiring the medical examinations and medical records based on the very large amount of other evidence.

¹¹ Judge Newman had requested that the oral argument be open to the public. June 15 Letter at 1, 3; *see also* July 5 Brief at 1. The Committee denied that request by order dated June 20, 2023, and explained that the Committee would consider publicly releasing a transcript of the argument, with appropriate redactions to protect any confidential information discussed during argument. June 20 Order at 5–8.

the Committee for a videotaped interview constitutes misconduct.

Our discussion proceeds in three parts.

First, we set out our conclusion that, where there is a reasonable basis to believe that a judge suffers from a disability that impairs his or her capacity to perform the duties of judicial office, the Committee had the authority to enter the orders at issue here.

Second, we explain in some detail that evidence provided to the Committee established a reasonable basis for the Committee to enter the orders at issue, including particularly the order requiring medical examinations with professionals chosen by the Committee. In fact, the evidence provided a clear, strong, and convincing basis for concluding that there are reasonable concerns that Judge Newman suffers from a cognitive impairment that prevents her from performing the duties of her office.

Third, we conclude that Judge Newman's refusal to cooperate with the Committee's orders constitutes misconduct. Judge Newman's refusal to undergo the ordered medical examinations, to provide medical records, and to sit for an interview thwarted the ability of the Committee to reach a final conclusion as to whether Judge Newman suffers from a cognitive impairment. None of the arguments Judge Newman offers to justify her conduct establishes good cause for her failure to cooperate with the Committee's orders with respect to these matters.

A. The Committee Had Authority To Enter the Orders At Issue.

The Committee concludes that it had authority to enter the orders at issue. The Act and the Rules give the Committee broad authority to gather information in conducting an investigation, and that authority fully encompasses the orders here. Section 353(c) authorizes the Committee to

“conduct an investigation as extensive as it considers necessary.” 28 U.S.C. § 353(c). The Rules similarly authorize the Committee to “determine the appropriate extent and methods of its investigation in light of the allegations.” Rule 13(a). That authority surely encompasses the Committee’s request that Judge Newman sit for an interview. Interviewing the subject is one of the most elementary steps in any investigation.

The Committee’s authority is broad enough to empower the Committee—where a reasonable basis exists for believing that a judge may suffer from a disability—to order medical examinations and the production of medical records. The Commentary to Rule 13 expressly recognizes that authority. It explains that, if “the special committee has cause to believe that the subject judge may be unable to discharge all of the duties of office by reason of mental or physical disability, the committee could . . . request the judge to undergo a medical or psychological examination.” Rule 13 cmt. And it provides that “[i]n addition or in the alternative, the special committee may ask to review existing records, including medical records.” *Id.*

The Committee’s authority to demand the examinations and records at issue is confirmed by the JC&D Committee’s decision in the *Adams* case arising from the Sixth Circuit. See *In re Complaint of Judicial Misconduct*, C.C.D. No. 17-01 (U.S. Jud. Conf. 2017) (*Adams*). There, a special committee was appointed to investigate a complaint against district judge John R. Adams based on behavior towards his colleagues in the Northern District of Ohio suggesting that he might suffer from a mental or emotional disability that prevented him from fulfilling the duties of his office. *Id.* at 10. The special committee ordered Judge Adams to undergo a mental health evaluation by a psychiatrist selected by the committee and to produce medical records, and Judge Adams refused. *Id.* at 11. The judicial

council of the Sixth Circuit held that his refusal to undergo the examination constituted misconduct. *Id.* at 14.

On review, the JC&D Committee squarely held: “If a judicial council or its special committee has a reasonable basis for concluding that a judicial colleague might suffer from a disability rendering him or her unable to perform the duties and responsibilities of the judicial office, the judicial council and its special committee necessarily possess the authority to request the subject judge undergo a mental health examination.” *Id.* at 29; *see also id.* at 36 (holding there was “no error in [judicial council’s] determination that Judge Adams should be required to undergo a mental health examination”). The JC&D Committee reached that conclusion even *before* the Rules had been amended to provide specific approval (as quoted above) for a special committee ordering medical health examinations. *See id.* at 30 n.15 (noting that the September 2015 amendments to the Rules were “immaterial to the outcome of this case”). *Adams* determined that the special committee’s authority arose directly from “the Judiciary’s inherent authority to regulate its affairs, 28 U.S.C. § 332(d)(1), including the conduct and fitness for duty of federal judges, and from its broad investigatory powers and decisional discretion under the Act and the Rules.” *Id.* at 29 (citing 28 U.S.C. §§ 353(c), 354(a)(1)(A), and Rule 13(a)). If anything, given the intervening amendment to the Rules, the authority of the Committee in this case is now even more clearly established.

Moreover, the JC&D Committee made clear that a special committee could insist—over the subject judge’s objections—that medical evaluations be carried out by independent professionals chosen by the special committee. Part of the central dispute in *Adams* was Judge Adams’s insistence that he should be allowed to choose the medical provider to conduct any examination and to circumscribe the nature of the examination. As the JC&D Committee explained: “While Judge Adams has expressed

a preference for being evaluated by an expert of his choosing and an opportunity to direct to some extent the nature of the examination, we conclude that the Special Committee and the Judicial Council appropriately exercised their discretion in determining that an examination by an independent expert is necessary to ensure accuracy and reliability of the procedures and examination results.” *Id.* at 32; *see also id.* at 36 (“We share the Judicial Council’s view that input from an independent medical expert is necessary to fully and fairly assess Judge Adams’s mental condition and fitness to continue to serve as a judge.”).

As *Adams* makes clear, the objections Judge Newman has made insisting that she must be permitted some say in selecting the medical providers to conduct any examination and some ability to restrict the scope of any examination, *see, e.g.*, May 10 Letter at 4, are misplaced. *Adams* rejected precisely the same objections in favor of the special committee’s authority to require an examination by an independent professional chosen by the special committee to ensure the “reliability” of the examination results. As in *Adams*, the Committee here has determined that it was essential to have independent providers chosen by the Committee perform evaluations of Judge Newman in order to provide the Committee a reliable and independent assessment. Judge Newman is also incorrect in arguing that, under the commentary to Rule 13, “a judge being investigated may, as an alternative to being seen by physicians hand-picked by the special committee, instead choose to be seen by another qualified provider and submit those records.” May 10 Letter at 4. That is not what the commentary says. To the contrary, after noting that a special committee may require a medical examination, it states that “[i]n addition or in the alternative, the special committee may ask to review *existing* records, including medical records.” Rule 13 cmt. (emphasis added). That comment does not give the subject judge any ability to create *new* records and insist

that the special committee must accept them in lieu of an examination by the committee's providers. Instead, it gives the special committee full discretion to require the production of existing records, either in addition to or instead of an examination.

Judge Newman also argues that *Adams* lacks value as a precedent because the order requiring Judge Adams to undergo a mental health examination was never actually enforced. *See* July 5 Brief at 13. It is true that, when the special committee recommended on remand that Judge Adams be sanctioned for continuing to refuse the examination, the Sixth Circuit Judicial Council decided to impose no sanction and did not further insist on the examination. *See* Order & Memorandum, *In re Complaint of Judicial Misconduct*, No. 06-13-90009, at 4 (6th Cir. Judicial Council June 27, 2018). But it reached that decision expressly on the basis that the judges of the Northern District of Ohio (four of whom had been the original complainants) took the position that “Judge Adams’s behavior had improved and stabilized” and that there “had been no recurrence of the sort of behavior that occasioned the misconduct finding.” *Id.* In other words, Judge Adams changed his behavior and resolved the problem. The fact that, after losing his appeal, Judge Adams changed his behavior and thereby obviated the need for enforcing the order for a medical examination does nothing to undermine the force of the JC&D Committee’s decision in *Adams* establishing the legal point that a special committee has the authority to order a judge to undergo a medical examination by independent professionals of the special committee’s choosing. Moreover, no change in behavior or lessening of the concerns which necessitated the ordered testing has occurred in this case. If anything, the contrary is true—both the delays in resolving cases, *see infra* pp. 54–56, and the troubling behaviors have continued since Judge Newman’s refusal to cooperate. *See infra* pp. 45–50, 105–06.

As discussed more fully below, the JC&D Committee in *Adams* also expressly concluded that Judge Adams’s refusal to undergo the mental health examination by the professional chosen by the special committee in that case constituted misconduct. It explained that his “failure to cooperate through his repeated refusals to undergo the mental health examination [ordered by the special committee] impeded the Judicial Council’s ability to conduct a thorough and conclusive investigation,” and therefore “it was conduct ‘prejudicial to the effective and expeditious administration of the business of the courts.’” *Id.* at 29–30 (quoting 28 U.S.C. § 351(a)).

Accordingly, the Committee concludes that it had authority—where there was a reasonable basis to conclude that Judge Newman may suffer from a disability that makes her unable to perform the duties of her office—to issue orders requiring the medical examinations by providers of the Committee’s choosing and the production of medical records to those providers. We turn next to describing the evidence that provided a reasonable basis for the Committee’s orders.

B. The Committee Had a Reasonable Basis for Requiring Medical Examinations and the Production of Medical Records.

The evidence gathered by the Committee clearly established that there is, at a minimum, a reasonable basis for concluding that Judge Newman may suffer from a disability that renders her unable to perform the duties of her office. To date, the Committee’s investigation has included review of court information on case handling and more than twenty interviews with court staff, one deposition of a staff member, a number of affidavits, and discussions with the Committee’s consulting expert, Dr. [REDACTED]. These formed the basis for the Committee’s conclusion that there was a reasonable basis for requiring the medical

examinations and medical records in order to determine whether Judge Newman suffers from a relevant disability. All of the affidavits and the deposition transcript were provided to Judge Newman on June 1.

The Committee emphasizes at the outset that its investigation did not include any interviews with judges of the Court. As the March 24 Order identifying the complaint that started this proceeding notes, the initial information provided to the Chief Judge included some information from judges. *See* March 24 Order at 2. As soon as the Committee began its investigation, however, the Committee determined that, compared to pursuing other sources of information, interviewing or otherwise gathering testimony from judges would less likely and less readily produce the desired objective, reliable evidence necessary to resolve the issue before the Committee.

To the extent concerns had been raised about Judge Newman's delays in her work, the Committee determined that data from the Clerk's Office was the most objective, authoritative, and reliable source of information available to the Committee about Judge Newman's caseload and the time she takes to issue opinions. From the very start of its work, the Committee also received a large volume of information from staff members describing concerns about their interactions with Judge Newman. The staff members themselves were the best source of information about whether such interactions created a reasonable basis to suspect a disability problem relevant to fulfilling the duties of an active judge. Those two sources of information, the Committee concluded, would be the best bases on which to make the determination, in particular, whether a demand for medical examinations and medical records was warranted. Interviewing judges was unnecessary and would have presented an additional challenge of steering clear of anything subject to being characterized (accurately or not)

as a disagreement about the merits of cases.¹² Thus, no testimony from judges, formal or informal, was included in the scope of the Committee's inquiry.

In this section of the Report, we address, in sequence, the information about Judge Newman's interactions with staff, the information about Judge Newman's delays in resolving cases even with a reduced workload, and the recommendations of the Committee's expert consultant. We then state the Committee's conclusion that there is an ample basis for requiring the medical examinations and records at issue. Thereafter, in Section II.C of this Report, we address why Judge Newman's refusal to comply with that requirement is misconduct and why she has not shown good cause justifying the refusal.

1. Concerns About Judge Newman's Cognitive State Raised by Judge Newman's Interactions with Court Staff.

Court staff from the Clerk's Office, the Information Technology (IT) and Human Resources (HR) offices, and Judge Newman's own chambers have reported that, in their interactions with Judge Newman over the course of the last one to two years, Judge Newman has exhibited behavior that indicates significant mental deterioration, including memory loss, lack of focus, confusion, uncharacteristic paranoia, severe agitation, and the

¹² Cf. 28 U.S.C. § 352(b)(1)(A)(ii) (authorizing chief judge to dismiss a complaint "directly related to the merits of a decision"); Rule 4(b) (excluding allegations related to the merits of a decision from the scope of cognizable misconduct); *In re Complaint of Judicial Misconduct*, 37 F.3d 1511, 1515 (U.S. Jud. Conf., Committee to Review Circuit Council Conduct & Disability Orders 1994) (noting that allegations directly related to the merits of a decision "are not cognizable under the Act").

inability to remember and execute simple tasks she was once capable of completing. Some of the concerns raised by staff are detailed below.

Several court staff members reported that over the last year Judge Newman frequently claimed that her email and computer were being hacked—also, at times, that her phones were being bugged—and that her complaints have increased from once or twice a week to almost daily or every other day. *See* ██████████ Aff. [1] ¶¶ 3, 7–10; ██████████ Aff. [2] ¶ 14; ██████████ Aff. [3] ¶¶ 2–4, 6; ██████████ Aff. [4] ¶ 4. They describe her demeanor when making these complaints in some instances as “agitated” and “paranoid” and the conversations as sometimes “bizarre” and “nonsensical.” ██████████ Aff. [4] ¶ 8 (“I would describe Judge Newman’s response as nonsensical because there was no reason to believe any of that was happening.”); *see* ██████████ Aff. [1] ¶ 8 (“She seems agitated and paranoid, and we frequently have to calm her down in order to help her with her problem.”); *see also* ██████████ Aff. [5] ¶ 5 (“I found Judge Newman’s behavior during this whole event to be very bizarre and confusing.”).

Staff reported that, in the past, Judge Newman claimed that the culprits who were hacking and bugging her devices were bloggers and the media who were out to get her and bring her down. ██████████ Aff. [2] ¶ 14. More recently, staff reported that she claimed that it is the Court itself hacking and bugging her devices. ██████████ Aff. [1] ¶ 3; ██████████ Aff. [4] ¶¶ 4, 8. She has claimed that things were disappearing from her computer and that the Court itself was responsible. ██████████ Aff. [6] ¶¶ 3, 5; ██████████ Aff. [4] ¶¶ 4, 8. At one point, she suggested that the Court was interfering with mail at her residence as well. ██████████ Aff. [4] ¶ 8.

In each instance, IT staff scanned her devices and found no evidence to justify or support Judge Newman’s

concerns. ██████ Aff. [2] ¶ 14 (“ITO would inform me that there were no concerns or IT issues.”); ██████ Aff. [3] ¶ 3 (describing that IT would “scan for malware and viruses, [and] there would be nothing that would suggest any malicious interference with her computer”). Staff indicated that her claims about hackers usually stemmed from her having forgotten where she saved a file or email, and even after the IT staff located the file or email for her (on her desktop or in one of her folders) she sometimes would continue to allege that hackers were responsible for hiding the file. ██████ Aff. [3] ¶ 3 (“Judge Newman routinely blamed her inability to find a file or email on someone ‘hacking’ her computer...I would usually be able to find the file she was looking for on a desktop folder or other location where she had forgot she saved it to. Rather than take responsibility for the errors, she would blame hackers or the computer.”); ██████ Aff. [2] ¶ 14 (“She seemed constantly paranoid about this despite no actual basis for her to be concerned.”); ██████ Aff. [1] ¶ 8 (stating Judge Newman’s concerns “seem to be easily explained by . . . forgetting what she was doing or not realizing that the network disconnected her based on inactivity”). Judge Newman’s paranoia about hacking and her consistent inability to comprehend that she merely misplaced files (despite the explanations given to her by court staff) support the Committee’s determination that there was a reasonable basis for the ordered medical examinations and records.

The IT Director reported that the last time Judge Newman participated in the Court’s mandatory security awareness training she was unable to complete it. ██████ Aff. [3] ¶ 5. The training consists of watching a 10–20 minute video and answering some multiple choice questions about the video. *Id.* The IT Director indicated that Judge Newman repeatedly failed the test. *Id.* She was unable to get the multiple-choice questions correct even after watching the short video several times—even though retesting

involves presentation of the same multiple-choice questions each time. *Id.* Ultimately, the IT Director watched the video with her, after which she was still unable to answer the same questions. *Id.* He reported having to feed her the answers in order for her to pass and that she was simply unable to retain the information she had just been presented multiple times. *Id.* This staff member indicated that he has worked with Judge Newman for many years and that, in the past, he was amazed at how quickly and easily she picked things up when she was in her 80s. *Id.* ¶ 2. Over the last few years, however, he noticed a change. He recounted that she now gets easily confused, has trouble retaining information, and forgets how to perform basic tasks that used to be routine for her. *Id.* (“However, particularly over the last few years, I’ve noticed a significant increase in Judge Newman forgetting how to perform basic tasks that used to be routine for her.”). This information from staff suggests that Judge Newman has difficulty retaining information and forming new short-term memories and supported the Committee’s concern about possible cognitive impairment which necessitated securing medical examinations and records.

Other staff reported similar instances in which Judge Newman forgot how to do simple tasks that she previously had no difficulty performing, such as logging into our Court system or network, remembering where she put court materials, and bringing her briefs and case materials to court on oral-argument days. ██████████ Aff. [2] ¶ 23 (“She used to have everything prepared for oral argument. However, for the last three months, she would show up on argument days without case materials she would typically bring with her”); ██████████ Aff. [1] ¶ 9 (“She never used to have a problem with these routine tasks” for “processes [that] have not changed” “but now seems to repeatedly forget how to do them.”). These instances did not involve new tasks or new technologies, but familiar ones.

Staff reported that Judge Newman has recently been having trouble recalling events, conversations, and information just days old and trouble comprehending basic information that court staff communicate to her. ██████ Aff. [2] ¶ 10 (“I have on multiple occasion[s] seen Judge Newman have trouble recalling events and information.”); *id.* ¶ 11–12 (chambers staff member describing Judge Newman forgetting recent conversations and that “Judge Newman did not recall the opinion that was issued a day earlier”); ██████ Aff. [1] ¶¶ 7–11; ██████ Aff. [7] ¶ 4 (reporting that Judge Newman asked her the same question related to compensation for a temporary employee four separate times in an approximately 24-hour period); ██████ Aff. [8] ¶ 37–39 (reporting Judge Newman could not comprehend location of documents after five separate attempts to explain).

Her judicial assistant, who spoke to her by phone every workday and was present in chambers every workday between approximately December 2021 (when he started in that role) and April 2023, explained that Judge Newman’s “memory loss and confusion has increased significantly since [he] started at the court.” ██████ Aff. [2] ¶¶ 1, 4–5, 10. He added that in daily telephone calls he would have to repeat information about the status of cases over and over to her and that she would forget whether she had voted on cases or had circulated opinions to the panel for vote. *See id.* ¶¶ 12–13. He also recounted how Judge Newman selected pictures of herself from her personal collection for use in a display the library was preparing—yet when these pictures were shown to Judge Newman the next month, she had no idea where they had come from and even stated that she had never seen them before. *Id.* ¶ 11 (“She seemed to have entirely forgotten about our prior recent meetings.”). And he reported that, in her last three oral argument sittings, she showed up to court without any

of the materials she would typically bring to court (such as briefs and bench memos). *Id.* ¶ 23.

Judge Newman’s judicial assistant further related a recent episode in which Judge Newman indicated that she was not required to comply with a Court rule that required circulating votes on opinions within 5 days. *See id.* ¶ 22. This rule was unanimously adopted by the Court (including Judge Newman) in March 2018. The staffer recounted that Judge Newman said that she did not have to comply with this rule because Chief Judge Markey told her she could take 30 days to vote. *Id.* Chief Judge Markey has been dead for 17 years and has not been a member of the Court for 32 years.

Other staff reported similar evidence of cognitive problems in various contexts—such as inability to perform simple tasks from one day to the next, even though she performed them independently for years without difficulty. ██████████ Aff. [1] ¶¶ 7–9, 10 (“Judge Newman was simply not comprehending the simple process for using the application that she used to have no problem handling on her own.”); ██████████ Aff. [3] ¶ 2 (“However, particularly over the last few years, I’ve noticed a significant increase in Judge Newman forgetting how to perform basic tasks that used to be routine for her.”); ██████████ Aff. [2] ¶ 23. One staff member stated, “Though it is difficult to say this, I believe Judge Newman is simply losing it mentally.” ██████████ Aff. [1] ¶ 12.

Many court staff reported that during conversations or email exchanges Judge Newman would ask the same questions, requiring provision of the same answer over and over in short periods of time. ██████████ Aff. [8] ¶¶ 5, 7–16 (describing multiple instances reminding Judge Newman that he had not interfered with her chambers staff or computer); ██████████ Aff. [7] ¶ 3; *see also* ██████████ Aff. [2] ¶¶ 10–11. Staff indicated that at times she seems confused and

suspicious and to be struggling to comprehend or remember what she is being told. ██████████ Aff. [7] ¶ 3 (“I had to answer the same questions repeatedly and then wait for answers on those same issues to move forward.”); ██████████ Aff. [8] ¶ 5 (“[I]t appeared to me that from one email to the next Judge Newman either did not read or did not recall the lengthy prior explanations I provided to her.”); ██████████ Aff. [9] ¶ 3 (“She was suspicious and confused and struggled to comprehend how the [calendaring] error occurred.”); ██████████ Aff. [1] ¶ 9 (“We have to walk her through the same steps over and over and she does not seem to remember them from day to day.”).

Another Clerk’s Office staff member reported an incident in which he had to assist Judge Newman to the courtroom and where she had to stop and sit outside the robing room to “gather the energy to stand.” ██████████ Aff. [9] ¶ 5. He said that “[s]he seemed lost and confused, like she wasn’t fully there.” *Id.* He also, like other employees, reported having to answer the same questions from her over and over in the same conversation. *Id.* ¶ 3. He indicated that Judge Newman was “suspicious and confused and struggled to comprehend” how an error in calendaring had occurred. *Id.* He explained it to her repeatedly, but she acted “distrustful.” *Id.*

In addition, recent events surrounding the departure of one of Judge Newman’s law clerks and her judicial assistant from her chambers have raised concerns on multiple fronts, including (1) Judge Newman’s apparent inability to manage staff in her chambers, (2) her inability to remember (or unwillingness to comply with) either the confidentiality requirements of the Court’s EDR process or outcomes established in that process, (3) her inability to remember or comprehend repeated explanations given to her about simple staffing and IT matters related to the departure of these employees from her chambers, and (4) her hostile and

accusatory interactions with staff based on perceived wrongs that have never actually occurred.

Judge Newman's judicial assistant recently raised a matter concerning events in Judge Newman's chambers pursuant to the confidential EDR process. The judicial assistant alleged that Judge Newman's [REDACTED] law clerk was calling him in the middle of the night to assign both professional and personal tasks. [REDACTED] Aff. [2] ¶ 35. For example, it was alleged that the [REDACTED] law clerk called the judicial assistant at 3:00 am to tell him to give her a wakeup call at 6:00 am. *Id.*; [REDACTED] Aff. [10] ¶ 1. The judicial assistant asked Judge Newman to ensure that phone calls and text messages during the middle of the night would be stopped, but Judge Newman did nothing, based on the view that "people hav[e] different schedules." [REDACTED] Aff. [2] ¶ 35; *see also id.* ("Despite my requests to stop, the clerk continued to contact me outside of regular working hours after bringing the matter to Judge Newman's attention."); [REDACTED] Aff. [10] ¶¶ 1, 4.

Judge Newman not only failed to take any steps to rectify the situation (even after she was approached as part of the EDR process), *see* [REDACTED] Aff. [2] ¶ 35 ("Judge Newman attributed these inappropriate communications to people having different schedules and did nothing about it."); [REDACTED] Aff. [10] ¶¶ 1–4, she sent an email to 95 individuals at the Court (nearly the entire court staff) disclosing the confidential EDR matter (including the identity of the employees). *See* April 6 Order at 2–6 (quoting Judge Newman's April 5 emails). And she suggested in the email that the middle-of-the-night contacts and her judicial assistant's concerns were not "significant." *Id.* at 6; [REDACTED] Aff. [10] ¶¶ 1, 3–4. The EDR process and its confidentiality are hallmarks of the judiciary's workplace conduct program. EDR Plan for the Federal Circuit § IV.B.1 ("All individuals involved in the processes under this Plan must protect the confidentiality of the allegations of wrongful conduct . . .

Information will be shared only to the extent necessary and only with those whose involvement is necessary to address the situation.”). Judge Newman’s conduct raises questions about her ability to remember or understand or appreciate important confidentiality requirements and to manage the administration of her chambers. Her refusal to participate in the EDR proceedings when they involved her chambers staff—and even when they involved complaints about her—raises concerns about Judge Newman’s ability to follow rules and manage staff, which may be related to a potential cognitive impairment.

Further concerns, potentially extending to Judge Newman’s case handling and functioning more generally, were raised when the Committee sought information from Judge Newman’s [REDACTED] clerk. In response to questions seeking basic information about her duties, the clerk—on advice of counsel—invoked her Fifth Amendment right to remain silent to avoid incriminating herself. For example, when asked, “Q. We understand that you are her [REDACTED] clerk. Can you tell us about that role and what your responsibilities are? A. I am going to invoke my right under the Fifth Amendment to avoid self-incrimination.” [REDACTED] Deposition at 4:5–9. She likewise asserted the Fifth Amendment in response to questions about estimating how many bench memos she has prepared in the last year, whether she’s ever prepared draft opinions, and whether she is currently working on any pending cases at the Court. *Id.* at 8:13–21, 32:10–20. She further invoked the Fifth Amendment when asked about her perceptions of Judge Newman’s ability to carry out her job. *Id.* at 30:4–9. And other information suggests that this clerk has taken on tasks such as doing Judge Newman’s grocery shopping. See [REDACTED] Aff. [2] ¶ 23 (“It is my understanding that this law clerk would also drive Judge Newman to medical appointments and for special events and do her grocery shopping.”).

A number of the communications already cited grew out of two separate but contemporaneous departures from Judge Newman’s chambers—by her judicial assistant, and by one of her law clerks. In April 2023, the judicial assistant raised concerns that Judge Newman had become “hostile” to him and was retaliating against him for a report he made to the Chief Judge in March stating that Judge Newman had improperly disclosed certain confidential information. ██████████ Aff. [2] ¶¶ 24–31. Through the EDR process, the judicial assistant was given an alternative workstation outside Judge Newman’s chambers. *Id.* ¶¶ 31–32. Judge Newman told other members of her chambers staff that her judicial assistant could no longer be trusted. ██████████ Aff. [11] ¶ 4 (law clerk stating he was informed by Judge Newman to no longer include ██████████ [Judicial Assistant] on chambers communications “because he could not be trusted”). One of her law clerks reported, on April 18, “Judge Newman asked her law clerks if we could handle ██████████ [Judicial Assistant’s] responsibilities without him. We all agreed that the clerks could handle those responsibilities.” *Id.* ¶ 13. Multiple other staff members reported the same day that Judge Newman stated her intention to have her judicial assistant forcibly removed from the building or arrested. *See* April 20 Order at 5–6; ██████████ Aff. [1] ¶ 6 (“Judge Newman then said that she was going to have ██████████ [Judicial Assistant] ‘removed from the court’ or ‘arrested.’”); ██████████ Aff. [4] ¶ 19 (“Judge Newman stated that she would have ██████████ [Judicial Assistant] removed from the court or arrested.”). Although Judge Newman had been informed that her judicial assistant was temporarily provided an alternative workplace under the Court’s EDR plan, she refused to accept that special accommodation (or could not remember it), and on April 19 she gave the judicial assistant an ultimatum: return to chambers immediately or she would accept his resignation (*i.e.*, he would lose his job). April 20 Order at 5; ██████████ Aff. [2] ¶ 34 (“I

understood Judge Newman as saying that she was going to terminate me immediately unless I dropped my request for an alternative work arrangement under the court's Employment Dispute Resolution Plan"); ██████████ Aff. [10] ¶ 8.

In light of these events, the judicial assistant successfully sought employment at the Court outside Judge Newman's chambers, and an email was sent to Judge Newman and her chambers staff on April 19, 2023, informing them that the judicial assistant was no longer a member of the Newman chambers and that he wished for there to be no further communication to him by any member of the Newman chambers including the Judge herself. *See* Ex. 1; ██████████ Aff. [10] ¶ 9.

On the same day, one of Judge Newman's law clerks also sought to and did remove himself from Judge Newman's chambers. He alleged that Judge Newman was utilizing her clerks to do research projects related to her disability defense rather than court-related work. *See* ██████████ Aff. [11] ¶ 8. He informed Judge Newman that he was uncomfortable performing personal work for her rather than court-related work. *Id.* ¶ 6. He also indicated that he was uncomfortable in chambers after Judge Newman told him that her judicial assistant could not be trusted and should be excluded from all chambers communications. *Id.* ¶¶ 2–4, 7, 9–16. He testified that he started teleworking to avoid the “drama, politics, and stress” in chambers. *Id.* ¶ 7. He requested to be transferred to another chambers. *Id.* ¶¶ 11, 14. Judge Newman refused to let him work for another judge, indicating that the optics would not be good for her and that he had two choices: stay in chambers or resign. *Id.* ¶ 14. The law clerk resigned, and he was taken on as a law clerk by another judge of the Court; he requested no further contact with Judge Newman, and Judge Newman received an email to that effect on April 19, 2023. *Id.* ¶ 17; *see* Ex. 2.

The circumstances surrounding the departure of these two employees from Judge Newman's chambers themselves raised several concerns about her management of employees and use of government employee time, her refusal to respect (or remember) the availability of an alternative work arrangement that had been established in the EDR process, and her wholly inappropriate threats about having employees fired or arrested. And her further reactions in the aftermath of these events raised additional concerns as they suggested an inability to remember events, an inability to understand or remember basic explanations that were given to her, and a tendency to make hostile and irrational accusations against staff members.

For example, on April 19, 2023, Judge Newman and her staff were sent emails indicating both (i) that one of her law clerks resigned effective that day and did not wish to be contacted by any member of the chambers, including the Judge, and (ii) the judicial assistant was no longer a member of the Newman chambers and that he similarly wished there to be no further communication with him. *See* Exs. 1–2; ██████████ Aff. [10] ¶ 9. Judge Newman expressly acknowledged receiving the email about her law clerk, indicated that her clerk's resignation was "appropriate," and stated that the clerk's separation from her chambers should be expeditiously processed. *See* Ex. 2. Yet eight days later, on April 27, 2023, Judge Newman sent an email to all judges on the Court indicating that she had not "released" the law clerk and that his continued service at the Court in another chambers was "in violation of my right to law clerk services." Ex. 3. Similarly, Judge Newman was fully informed that her judicial assistant had resigned on April 19. Yet on April 27, 2023 (again just 8 days later), she sent an email to all judges stating: "I never released my judicial assistant [] from my chambers staff. His

movement to your staff,¹³ without consultation with me, violates his confidentiality and other obligations to me.” *Id.* Despite being repeatedly told that the judicial assistant chose to leave her chambers because of her alleged abusive treatment of him, Judge Newman has accused the Court, various judges, the Chief Judge, and our Clerk of Court on multiple occasions of having improperly taken her judicial assistant away and/or depriving her of secretarial services. *See* Exs. 4–6; *see* ██████████ Aff. [8] ¶¶ 4, 10–11, 13 and attached exhibits (quoting Newman May 17 email stating that he “deprived [her] of secretarial services” (alteration in original)).

These facts raise concerns about Judge Newman’s confusion, memory, ability to properly manage her chambers staff, and ability to interact with court staff—all of which contribute to our concerns that she may have a disability which renders her unfit to continue as an active judge.

Still further events following the judicial assistant’s departure from Judge Newman’s chambers add to the grounds for concern about her inability to remember or understand basic explanations. Our ██████████ Human Resources (HR) [Employee] tried for weeks to work with Judge Newman to replace her judicial assistant. As emails from HR indicate, Judge Newman was informed on April 24, 2023, that she could rehire her *former* judicial assistant on a temporary basis (as Judge Newman had requested). Then, on April 27, 2023, Judge Newman was informed that she could advertise to hire a new permanent judicial assistant.¹⁴ *See* ██████████ Aff. [7] ¶¶ 3–5 and attached exhibits;

¹³ The former judicial assistant now works in the Clerk’s Office and as a courtroom deputy.

¹⁴ For multiple reasons, including the pending EDR proceeding concerning Judge Newman’s treatment of her judicial assistant, the Judicial Council had initially placed

Ex. 4. From that point, HR tried repeatedly to work with Judge Newman both to bring back her requested temporary judicial assistant and to post an opening for a new permanent person. ██████ Aff. [7] ¶ 2; *id.* ¶ 3 (“I had over 20 email and phone call exchanges with Judge Newman over this time trying to get her approval [for temporary and permanent hiring].”). HR reported exchanges in which Judge Newman asked the same questions over and over, requiring the same answer to be given repeatedly. For example, Judge Newman asked HR whether her former judicial assistant (a retired annuitant) would face a salary offset to her pension if she returned. *Id.* ¶ 4. HR informed her in writing that her assistant would receive both her full pension *and* salary for hours worked at the Court. *Id.* Judge Newman responded 30 minutes later, “To be clear: Are you saying she would receive no additional pay for working at the court?” *Id.* In the same 24-hour period, HR reported having to answer this same question *four* separate times. *Id.* There was a subsequent email to Judge Newman explaining that any delays in acquiring the approved support services were entirely due to her not giving permission to move forward to fulfill her own request. *See id.* ¶ 5; *see also* Ex. 4 at 1. Judge Newman’s communications and interactions regarding the process of replacing her assistant and her repeated claims that her assistant had been taken away from her and that she was denied secretarial services raise further concern about possible memory loss and confusion.

a pause on hiring new personnel for Judge Newman’s chambers on April 20, 2023. Four days later, on April 24, 2023, Judge Newman’s request to bring back, on a temporary basis, the person who had served as her judicial assistant until a year and a half earlier was approved.

Judge Newman also has become convinced that, when her judicial assistant's computer was moved out of her chambers along with him (as is standard practice), *see* ██████████ Aff. [8] ¶ 28, information from her chambers was removed with it. Multiple staff members from the IT Department and the Clerk's Office have explained to her that all chambers information was stored on her chambers' shared network drive, not the hard drive on that computer; that the hard drive on that computer had specifically been checked multiple times and contained none of her chambers' information; and that IT could help her locate whatever information she needs. *See* Ex. 6 at 9 ("We have checked, double checked and tripled checked and there is no data on any local computer or drive that belongs to you. All of your data is on the Newman share. There is absolutely nothing to give you."); ██████████ Aff. [8] ¶¶ 27–40 and attached exhibits; ██████████ Aff. [6] ¶¶ 2–6. Judge Newman, however, either was unable to understand or refused to accept these explanations. Instead, she repeatedly accused various staff members of involvement in stealing her computer and files.

Our Clerk of Court¹⁵ has detailed Judge Newman's repeated email accusations that he was involved in "illicit removal" of equipment from her chambers and that he participated in the theft or removal of chambers records including her financial disclosure information—along with accusations that he was acting as Chief Judge Moore's lawyer, that he was Judge Newman's "adversary," and that he repeatedly withheld secretarial services from her. ██████████ Aff. [8] ¶ 4 and attached exhibits. He has reported how he had to explain to Judge Newman *five* separate times that no one had stolen her computer or her records and that he verified that fact and had our IT Department

¹⁵ Before July 1, our current Clerk of Court was Deputy Clerk and at times Acting Clerk of Court.

verify it on multiple occasions. *Id.* ¶¶ 25–40. He has described Judge Newman’s behavior toward staff as “agitated, belligerent and demonstratively angry.” *Id.* ¶ 37 and attached exhibits. And he has stated that “the hostile nature of Judge Newman’s personal accusations against me stands in sharp contrast to how I have interacted with any of the other 50-or-so federal judges with whom I have worked both in the Federal Circuit and in other federal courts since I began working in the federal judiciary in 2004.” *Id.* ¶ 5.

IT Staff, for their part, have reported that, after Judge Newman had once again accused the Clerk’s Office employees of stealing her computer and files, on May 16, 2023, IT was sent to her chambers to assist her. [REDACTED] Aff. [6] ¶ 2; *see also* [REDACTED] Aff. [5] ¶¶ 1–5. The IT staff told Judge Newman that they knew exactly where her financial disclosure information was located on her desktop and offered to show her. [REDACTED] Aff. [6] ¶¶ 3–5. They reported that she angrily refused to let them touch her computer. *Id.* ¶ 3. They offered to show her law clerk where the file was located if she preferred. *Id.* ¶ 6. She refused that assistance as well. *Id.* It was reported that she was “clearly upset and frustrated and was walking back and forth mumbling about how her computer and phone had been taken away from her when that was not the case.” *Id.* ¶ 8; *see also* [REDACTED] Aff. [5] ¶¶ 3, 5 (“Judge Newman was pacing back and forth and visibly angry and frustrated I found Judge Newman’s behavior during this whole event to be very bizarre and confusing.”). The staff reported that Judge Newman became angry and accused her judicial assistant of having stolen her computer, phone, and files and demanded “that she wanted her ‘twenty-year-old computer’ back.” [REDACTED] Aff. [6] ¶ 4. The staff reported that she was so angry they feared she might collapse. *Id.* ¶ 7 (“I got worried that Judge Newman was getting so angry that she might collapse or have

a heart attack if the conversation continued.”). The staff was left shaken by the exchange. *Id.* ¶ 8.

Various employees have described the toll that recent encounters with Judge Newman has taken on them causing them serious anxiety, stress, and discomfort. ██████████ Aff. [8] ¶¶ 5, 36 (“██████████ [Help Desk Manager] was audibly upset and bothered and he said it was due to how Judge Newman behaved and treated him”); *id.* ¶ 6 (stating interactions with Judge Newman caused “emotional stress and discomfort, including loss of sleep and heightened anxiety”); ██████████ Aff. [6] ¶ 8 (“I was left shaken and upset from this experience.”); ██████████ Aff. [2] ¶ 37 (“The past few months have been extremely stressful and have caused severe anxiety and emotional distress brought on by Judge Newman’s recent behavior towards me”); ██████████ Aff. [11] ¶ 14 (“[W]orking in [Judge Newman’s] chambers was hurting my ability to complete my work, taking a toll on my mental health, and harming my relationships at the court.”); ██████████ Aff. [10] ¶¶ 9, 10 (describing ██████████ [Judicial Assistant] as “visibly emotional” due to Judge Newman’s behavior and having confided “the toll that this entire experience was taking on his physical and mental well-being, including seeking help from medical professionals”). Court staff have reported that because of the difficulties they are experiencing with Judge Newman, they now bring a second employee with them if they are required to go to the Newman chambers. ██████████ Aff. [5] ¶ 1; ██████████ Aff. [6] ¶ 1; ██████████ Aff. [8] ¶ 6 (“I requested that staff attempt to engage in conversations with Judge Newman only by email or to bring a second person along if required to go to her chambers.”).

These reports from staff paint a consistent and disturbing picture that established a reasonable basis for concern that Judge Newman may suffer from a cognitive impairment that renders her unable to perform the duties of her

office. They describe a judge who cannot remember how to accomplish simple, routine tasks such as logging onto the computer network or finding files—but who diverts blame with paranoid assertions about hackers (or the Court) deleting her files. They describe a judge who cannot manage staff within her chambers and who permits wholly unreasonable treatment of some staff members by others (such as 3:00 am telephone calls), who refuses to respect the Court’s EDR process, discloses confidential information from that process, and threatens the employment of staffers who avail themselves of remedies under that process. They also describe a judge who cannot be reasoned with and who cannot understand that the hard drive on a computer that was moved from her chambers along with a departing employee did not contain any of her chambers’ information on it—and who, as a result, repeatedly lashes out at innocent staff members with irrational accusations that they are serving as counsel opposed to her or were involved in the “illicit removal” of her computer. In short, consistent reports from so many different staff members describing memory loss, confusion, paranoia, and angry rants directed toward staff raise concerns that Judge Newman may have a disability that renders her unable to perform the duties of her office. They amply establish that the Committee had a reasonable basis for ordering medical examinations and the production of medical records.

2. Judge Newman’s Significant Delays in Resolving Cases.

Judge Newman’s significant delays in resolving cases also reasonably support the conclusion that she may suffer from a disability that prevents her from effectively and expeditiously carrying out the duties of her office.

Time Period	# of Maj. Op. PN	Assignment to Issuance Average for PN Opinions	# of Maj. Op. Average for Other Active Judges	Assignment to Issuance Average for Other Active Judges
10/20-9/21	9 25 (including separate opinions)	249 days	42 44 (including separate opinions)	61 days
10/21-3/23	10 28 (including separate opinions)	199 days	58 61 (including separate opinions)	53 days

Between October 1, 2021 and March 24, 2023, Judge Newman authored only 10 majority opinions compared to an average of approximately 58 for the other active judges on the Court. [REDACTED] Aff. [12] ¶¶ 17–18. Even accounting for dissents and concurrences, during this time period, the average active judge authored 61 opinions, whereas Judge Newman authored 28. *Id.* At the same time, Judge Newman took more than three times as long to issue her opinions. Other active judges averaged approximately 53 days to issue an opinion after assignment. In contrast, Judge Newman’s average time to issuance was approximately 199 days. [REDACTED] Aff. [13] ¶¶ 15, 17; [REDACTED] Aff. [12] ¶ 13. The next closest judge authored 55 opinions (43 majority opinions and 12

dissents/concurrences) and had an average time from assignment to issuance of 106 days. [REDACTED] Aff. [12] ¶ 19. The next closest judge thus wrote approximately twice as many opinions in approximately half the time.

Similarly, between October 1, 2020 and September 30, 2021, Judge Newman authored only 9 majority opinions while the other active judges authored on average 42. [REDACTED] Aff. [13] ¶¶ 10, 12. Even accounting for dissents and concurrences, during this time period, the average active judge authored 44 opinions, whereas Judge Newman authored 25. [REDACTED] Aff. [12] ¶¶ 14–15. The other active judges averaged 61 days from assignment to issuance, whereas Judge Newman’s average time to issuance was 249 days—more than four times the average. [REDACTED] Aff. [13] ¶¶ 11, 13.

Judge Newman’s extended delays relative to her colleagues, coupled with her considerably lower productivity during the same period, is strong cause for concern that she suffers from a disability impairing her ability to carry out the responsibilities of her office.

In addition, there have also been a number of recent instances in which cases have been reassigned from Judge Newman to another judge following abnormally lengthy delays. See March 24, 2023 Order at 4–5. To reiterate just a few examples: (1) [REDACTED], a pro se case submitted on the briefs without oral argument, was reassigned after it had been pending 374 days and was resolved within 3 days of reassignment; (2) [REDACTED], also a pro se submitted case, was reassigned after it had been pending 624 days and was resolved within a month of reassignment; and (3) [REDACTED], also a pro se submitted case, was reassigned after it had been pending 302 days and was resolved within a couple of weeks of reassignment. See [REDACTED] Aff. [13] ¶¶ 19–25.

These statistics raise serious cause for concern regarding Judge Newman's ability to carry out her duties. Considered together with the other evidence described above, this data confirms that there is a reasonable basis to believe that Judge Newman may suffer from a disability preventing her from efficiently or expeditiously performing her duties as a judge.

Judge Newman's only response to the evidence of abnormal delay despite strikingly lower productivity is that during the summer of 2021, Judge Newman sat on 10 panels. The focus on that particular period is too narrowly selective. But in any event our research demonstrates that during this time period, when arguments were conducted by telephone because of COVID, these 10 panels considered 51 cases. Judge Newman presided over 9 of the 10 panels and assigned herself just one opinion. (She also had 5 dissents, full or partial, during that period.) This compares to 33 opinions that were assigned to the other members of those panels for cases heard during that period. (The remainder were summarily affirmed under Federal Circuit Rule 36.) The one opinion she assigned to herself took her 234 days from the date of oral argument to issue. Thus, while Judge Newman still sat on a number of cases similar to her active colleagues during the summer of 2021, her productivity as measured by opinions and timeliness was much lower.

The results of the Committee investigation demonstrate that Judge Newman's lower productivity is indicated in three ways: (1) she does not assign herself a comparable share of opinions (even considering her higher rate of dissenting) and takes unreasonable lengths of time to complete opinions she does assign herself (as detailed above); (2) she does not participate in motions panels, an important

and time-consuming task required of active judges;¹⁶ and, (3) Judge Newman's participation in cases has substantially slowed over the last year: May 2022–April 2023. From May 2022 through April 2023, the average active Federal Circuit judge participated in deciding 129 cases; Judge Newman in contrast participated in deciding only 65 cases.¹⁷ [REDACTED] Aff. [12] ¶¶ 21–22.

Finally, Judge Newman has not been paneled for any new cases in the months of April, May, June, July, August, or September 2023 and has not sat on motions panels since January 2021. *See id.* ¶ 23. Despite having six months with no new cases and no motions panels for more than two years, Judge Newman continues to be unable to reduce her backlog. On March 8, 2023, when the Judicial Council unanimously voted not to allow new case assignments to Judge Newman, she had 9 majority opinions in her chambers that had been pending for an average of approximately 126 days. When on May 25 Judge Newman asked

¹⁶ In recent years, each active judge generally has acted as Lead Motions judge one month per year and participated in motions panels 4 months a year. In 2023 to date, there have been an average of 69 motions resolved by written opinions each month. In 2022, there were an average of 63 motions resolved by written opinion each month. Judge Newman has, voluntarily, not participated in motions panels since January 2021.

¹⁷ The March 24 complaint suggested that in 2021 Judge Newman agreed to be taken off motions panels and that her sittings were reduced compared to her colleagues. The Committee's investigation, in reliance on Clerk's Office data, has determined that it is correct that Judge Newman ceased to participate in motions panels after January 2021, but that her sittings were not reduced compared to her colleagues until approximately May 2022.

the Judicial Council to reconsider paneling her for new cases, the Judicial Council found she still had 7 of those 9 opinions in her chambers. As of that date, those seven opinions had been pending for an average of approximately 163 days. The Judicial Council explained it was “particularly concerned that Judge Newman has been unable to make any significant progress on addressing her opinion backlog despite having three law clerks, having no new cases assigned for April, May, June, or July, and not sitting on motions panels since January 2021.” June 5 Judicial Council Order at 3–4.

We are now at the end of July, and Judge Newman still has not issued majority opinions in seven outstanding cases, six of which have now been pending in excess of 180 days, placing her again in violation of Federal Circuit Clerical Procedure # 3 ¶ 15 (CP #3). The seventh case has been pending 171 days. The average pendency of Judge Newman’s outstanding cases is now more than 230 days.¹⁸

¹⁸ We note that Judge Newman has circulated draft opinions in three of these seven cases to the relevant panels. But in all three, panel members promptly conveyed serious concerns and questions about the drafts, requiring Judge Newman to withdraw them to make revisions—putting them back in the status where time is charged to her. And in two of those three, to date, no revised opinion has been circulated to the panel. For example, with regard to the oldest case in the Court, the panel did not receive the draft until approximately 270 days after Judge Newman assigned this pro se case to herself. Four days after the opinion was circulated to the panel on June 7, 2023, the panel responded on June 12 with an extensive memo outlining questions and concerns that required addressing. Judge Newman responded on June 13 that she would

The Committee is aware that analyses based on publicly available data have been presented elsewhere purporting to show that Judge Newman's productivity does not deviate significantly from that of other judges. The Committee notes that public data regarding the resolution of cases is materially incomplete in ways that significantly obscure the exact information the Committee must analyze. For example, public data does not (and cannot) reflect which judges authored per curiam opinions. This omission is significant because 31.6% of opinions issued by the Court are per curiam. See ██████████ Aff. [12] ¶ 20. From October 1, 2021 through March 24, 2023, 616 opinions were issued and 195 (or 31.6%) were per curiam. *Id.* Only 1 of the 195 per curiam opinions was authored by Judge Newman. *Id.* Data that neglects authorship of per curiam opinions therefore materially distorts conclusions about a judge's productivity and delay. The Court's internal data maintained by the Clerk's Office, from which the above statistics have been derived, accounts for authorship of every opinion.

Similarly, public data reflecting the time between an appeal being docketed and terminated does not indicate the time between when a judge is assigned an opinion and when the opinion issues—the relevant metric for assessing delay attributable to the authoring judge. The Court's internal data accounts for when authorship is actually assigned, providing an accurate picture of the fraction of an appeal's pendency that is attributable to delay by a judge in producing an opinion.

The Court's internal data also accounts for delays in authorship attributed to stays or reassignments. Again, the public data looking only at the time between docketing and termination does not account for delays for

prepare a revision. Judge Newman has not to date circulated a revision.

administrative reasons and delays in authorship. Nor does public data reflect when cases have been reassigned to another judge. For example, in [REDACTED], Judge Newman did not circulate a draft opinion until 624 days after argument. The case was reassigned to another panel member and the opinions issued within a month. Publicly available data would attribute the entire period of 650+ days from argument to issuance to the judge ultimately listed as the author of the majority—when in fact Judge Newman was responsible for 624 of those days and the authoring judge was responsible only for about a month. Only data from the Clerk’s Office, which takes into account such reassignments, can accurately attribute delay to the proper judge. Public databases cannot do so.

Finally, statistics that attribute the time between docketing and termination to all three judges on a panel will also obscure delays attributable to any individual judge. Again using [REDACTED] as an example, Judge Newman failed to produce an opinion for 624 days before the case was reassigned to another judge. After reassignment, the case was resolved within a month. Panel-based statistics will inaccurately attribute the 624-day delay to all three judges on the panel, despite the fact that this delay was entirely attributable to Judge Newman. Conversely, panel-based statistics will also artificially decrease a non-authoring judge’s average time for resolution when he or she sits on a panel with an expeditious author.¹⁹ This

¹⁹ Not surprisingly, panel-based data often results in roughly comparable statistics for every judge. Because panels are randomly assigned, each active judge sits with every other active judge with roughly equal frequency. This will necessarily result in panel-based statistics appearing similar for every judge because fluctuations above or below the mean will average out.

metric provides no basis at all for ascertaining delay attributable to individual judges.²⁰

3. Recommendation of the Committee's Expert Consultant.

The Committee's consultant, Dr. [REDACTED], has recommended that Judge Newman undergo a neurological evaluation and a complete neuropsychological battery of tests to determine whether she suffers from a disability impairing her functioning, and if so, its nature and extent.

The Committee retained the services of Dr. [REDACTED] to serve as an expert consultant to the Committee. Dr. [REDACTED] was recommended to the Committee by the Administrative Office of the United States Courts. He has served as a consultant on proceedings involving the suspected disability of federal judges by other circuits and has been relied upon in the [REDACTED] Court's attorney

²⁰ Judge Newman's brief suggests that "the speed of Judge Newman's opinion writing is a matter of some dispute" and cites an article by Ron Katznelson. July 5 Brief at 14 (citing Ron D. Katznelson, Ph.D., *Is There a Campaign to Silence Dissent at the Federal Circuit?*, available at <https://ssrn.com/abstract=4489143> (last visited July 31, 2023)). We do not agree. This article suffers many of the same flaws already discussed herein: It does not accurately account for per curiams (of which Judge Newman authored only 1 of the 195 between October 1, 2021, and March 24, 2023); it measures the time from docketing of a case in the court (not from assignment to a judge); and it cannot account for cases reassigned during pendency. Finally, it focuses on different time periods. See Katznelson (comparing Judge Newman's performance over two 2 ¼ year time periods and ending in December 2022). This data is simply not as accurate or reliable as our Clerk's Office and therefore does not create a dispute of fact.

disciplinary body as a medical expert. See Order, [REDACTED]
[REDACTED]
(stating Dr. [REDACTED] is the [REDACTED] Circuit's [REDACTED]
[REDACTED] for judicial disability proceedings);
[REDACTED]
[REDACTED]. He is a [REDACTED]
[REDACTED] professor of psychiatry at the University of Colo-
rado and a board-certified psychiatrist.

Dr. [REDACTED] has reviewed the materials discussed above regarding the staff's interactions with Judge Newman and her delays in issuing opinions and informed the Committee that he believes that the ordered medical examinations are necessary to determine if Judge Newman has a disability that affects her ability to perform the functions of a judge. He indicated to the Committee that the tests he recommended are the appropriate tests under the circumstances to ascertain the nature and scope of any potential disability. He also indicated that the recommended tests are the same tests ordered in other courts when there are disability concerns regarding a judge. He has further indicated that the medical records specified by the Committee are important for a neurologist to have for a determination of the kind of impairments at issue here. See May 16 Order at 5-6. Judge Newman has not materially challenged Dr. [REDACTED]'s qualifications to consult with the Committee on these matters.

4. Committee Conclusion.

The reports to the Committee of memory loss, confusion, agitation, paranoia, and an increasing inability at times to perform simple, routine tasks necessary to carry out her duties as an active judge, combined with Judge

Newman's backlog and delays in the processing of cases compared to her colleagues and Dr. ██████'s recommendation, provide more than a sufficient basis for the Committee's conclusion that there was a reasonable basis for requiring Judge Newman to undergo the medical examinations and to produce the requested medical records.

C. Judge Newman's Refusal To Cooperate with the Committee's Orders Is Not Justified By Any Good Cause and Constitutes Misconduct.

The Committee also concludes that Judge Newman's failure to cooperate with the Committee's orders constitutes misconduct. As explained below, Judge Newman's refusal to cooperate with the Committee's orders has seriously undermined the Committee's ability to carry out its duties under the Act. It has impeded the Committee's ability to fulfill its central task of reaching a recommended finding as to whether Judge Newman suffers from a disability that renders her unable to perform the duties of her office. Impeding the Committee's investigation qualifies as conduct "prejudicial to the effective and expeditious administration of the business of the courts." *See* 28 U.S.C. § 351(a). In addition, Judge Newman has not shown any good cause for her refusal to cooperate.

1. Judge Newman's Refusal To Cooperate with the Committee's Orders Qualifies as Misconduct.

The Act broadly defines misconduct as "conduct prejudicial to the effective and expeditious administration of the business of the courts." 28 U.S.C. § 351(a). Rule 4(a)(5) more specifically defines misconduct within that broad category to include "refusing, without good cause shown, to cooperate in the investigation of a complaint." Rule 4(a)(5). Under the Act and the Rules, Judge Newman has a duty to cooperate with the Committee's investigation. Indeed, as the commentary to Rule 13 explains, a judge's duty to

cooperate is “rooted not only in the Act’s definition of misconduct but also in the Code of Conduct for United States Judges, which emphasizes the need to maintain public confidence in the judiciary and requires judges to ‘facilitate the performance of the administrative responsibilities of other judges and court personnel.’” Rule 13 cmt. (citations omitted); *see also* Code of Conduct for United States Judges, Canon 2(A), Canon 3(B)(1).

Here, Judge Newman has plainly refused to cooperate in the Committee’s investigation. Over the course of the last three months, the Committee repeatedly ordered Judge Newman to undergo medical examinations to ascertain the nature and extent of a possible disability, repeatedly ordered the production of medical records to assist the professionals performing the examinations in determining whether there was a disability, and repeatedly asked Judge Newman to interview with the Committee. Judge Newman has refused to cooperate with the Committee’s amply justified demands, including as clarified in the May 16 Order.

Her refusal, moreover, has impeded the Committee’s investigation. Her actions undermine the Committee’s ability to fulfill its statutory duty to investigate whether Judge Newman suffers from a disability and thwart the aims of the Act. Without regard to what Judge Newman’s intent may be, the effect of her failure to cooperate is that the Committee has been prevented from making its disability determination on the soundest basis, which includes the medical examinations and records at issue.²¹ As

²¹ We make no findings regarding Judge Newman’s intent or motive for refusing to cooperate. The refusal is an unjustified, substantial impairment of the Committee’s ability to make a disability determination on the soundest basis, and that is so regardless of intent or motive. To be

explained above, the Committee believes that, to reach a conclusion on that point, it is important that the Committee have the specified input of independent medical professionals who had examined Judge Newman. *Cf. Adams*, C.C.D. No. 17-01, at 36 (“We share the Judicial Council’s view that input from an independent medical expert is necessary to fully and fairly assess Judge Adams’ mental condition and fitness to continue to serve as a judge.”). Indeed, the Committee’s consulting expert, Dr. ██████, advised that, while the evidence before the Committee plainly raised concerns about Judge Newman’s cognitive state, he could not come to an opinion with a reasonable degree of medical certainty about Judge Newman’s mental fitness without the medical examinations and medical records that only she could provide. Particularly given its practical effect in impeding the investigation, Judge Newman’s refusal to cooperate amounts to “conduct prejudicial to the effective and expeditious administration of the business of the courts.” 28 U.S.C. § 351(a).

sure, the Rules permit the Committee to reach findings regarding disability even if a judge impedes an investigation by refusing to cooperate with medical examinations. Rule 13 cmt. (“If, for example, the subject judge impedes reasonable efforts to confirm or disconfirm the presence of a disability, the special committee may still consider whether the conduct alleged in the complaint and confirmed in the investigation constitutes disability.”). But taking that course here is inadvisable compared to proceeding on the issue of misconduct for refusal to cooperate—to which the Committee has accordingly limited its findings and recommendations. The Committee recommends that the Judicial Council retain jurisdiction of this matter so that it may further adjudicate the disability complaint in the event circumstances change.

The decision of the JC&D Committee in *Adams* strongly confirms that Judge Newman's actions constitute misconduct. As explained above, the JC&D Committee in *Adams* had before it a situation effectively on all fours with this case in which a judge refused to undergo a mental health examination as ordered by a special committee investigating whether that judge suffered from a disability. The JC&D Committee determined that the judge's refusal to undergo the examination constituted misconduct. It explained that the judge's "failure to cooperate through his repeated refusals to undergo the mental health examination [ordered by the special committee] impeded the Judicial Council's ability to conduct a thorough and conclusive investigation," and "[a]s such, it was conduct 'prejudicial to the effective and expeditious administration of the business of the courts.'" *Adams*, C.C.D. No. 17-01, at 29–30 (quoting 28 U.S.C. § 351(a)). The JC&D Committee explained that it "affirmed the Judicial Council's finding of misconduct based on Judge Adams's refusal to cooperate with the Special Committee's request that he undergo a mental health examination with a psychiatrist selected by the Special Committee." *Id.* at 38. In addition, the JC&D Committee made clear that continued refusal to comply with the order for an examination on remand would warrant sanctions: "[S]hould Judge Adams refuse to submit to the mental health examination ordered by the Judicial Council and affirmed by this Committee, sanctions for Judge Adams's continued failure to cooperate . . . may be warranted." *Id.* at 39. The same analysis applies here.

Thwarting the Committee's execution of the process established by Congress for determining whether a life-tenured judge suffers from a disability is a serious matter. The litigants whose rights are at stake in the cases before this Court deserve to have confidence that none of the judges ruling on their cases suffers from a cognitive problem impairing the ability to decide their cases. They also deserve

to have confidence that the mechanisms Congress established for addressing judicial disability function properly and that a judge with such an impairment cannot simply stymie the process. In addition, the court staff deserve to work in an environment free from abuse or anger directed at them by a judge whose behavior and interactions in the workplace are distorted by a mental disability. The Committee and the Judicial Council have an overriding duty to ensure that the judges on this Court are able-minded and capable of performing their jobs. When serious concerns are raised about a judge's fitness, they must be taken seriously and addressed expeditiously, and all judges must recognize their duty to facilitate that process. Under the circumstances, therefore, the Committee believes that Judge Newman's refusal to cooperate by undergoing the necessary medical examinations, providing medical records, or even participating in an interview constitutes a serious form of misconduct.

2. Judge Newman Has Not Shown Good Cause To Excuse Her Refusal To Cooperate.

As noted above, Rule 4(a)(5) defines misconduct to include "refusing, *without good cause shown*, to cooperate in the investigation of a complaint." Rule 4(a)(5) (emphasis added). The Committee accepts that a showing of good cause could potentially excuse or justify Judge Newman's refusal to cooperate with the Committee's orders and thus could preclude any ultimate finding of misconduct. Judge Newman has offered various arguments to justify her refusal to cooperate. None, however, is convincing, and none constitutes good cause foreclosing a finding of misconduct.

a. Proceedings Before the Committee (and the Judicial Council) Do Not Violate Due Process or the Judicial Recusal Statute.

Judge Newman makes several arguments to advance the core assertion, repeated throughout her submissions

and summarized in the conclusion to her July 5 Brief, that “neither the Judicial Council of the Federal Circuit nor this Committee is an appropriate bo[d]y to investigate these (meritless) allegations” due to a “risk of bias” that is “too high to be constitutionally tolerable.” July 5 Brief at 16. Judge Newman relies on these theories to argue repeatedly that this proceeding should have been transferred to the judicial council of another circuit. For the reasons explained below, the Committee concludes that none of these arguments has merit.

First, Judge Newman argues that this proceeding violates due process because the Chief Judge identified the complaint against Judge Newman and thus is the “complainant.” July 5 Brief at 4. According to Judge Newman, that means that the Chief Judge cannot be a “neutral decisionmaker” and that serving in the role of decisionmaker would violate the principle that “no man can be a judge in his own case.” *Id.* at 4–5 (quoting *Williams v. Pennsylvania*, 579 U.S. 1, 8 (2016)).

That argument misunderstands the role of the Chief Judge in identifying a complaint under Rule 5. Judge Newman’s argument treats the Chief Judge as if identifying a complaint gives the Chief Judge a *personal* stake in the case giving rise to an inference of bias—as if the Chief Judge were a private party bringing a complaint of misconduct. That is incorrect. Rule 5, implementing 28 U.S.C. § 351(b), merely provides a mechanism for the court to protect institutional interests in the functioning of the judiciary by ensuring that, when information comes to light that may indicate judicial misconduct or a disability, it is not simply ignored just because no private party pursues a complaint. The Rules thus charge the Chief Judge with the institutional responsibility of determining whether the information made available to her warrants an investigation. *See also* Rule 3 cmt. (“The process relies on chief judges

considering known information and triggering the process when appropriate.”).

What Judge Newman is really challenging with her charge that the Chief Judge is a “complainant” is the combination of investigative and adjudicatory roles in the Chief Judge as the person who (i) determines whether an investigation is warranted; (ii) participates in conducting the investigation as a member of the special committee; and then (iii) acts as a decisionmaker—both as a member of the special committee and as a member of the judicial council. *See* 28 U.S.C. §§ 351–354; Rules 5, 11, 12, 18, 20. It is well settled, however, that the mere combination of those roles is not foreclosed by the Due Process Clause. As the Supreme Court held in *Withrow v. Larkin*, 421 U.S. 35 (1975), “the combination of investigative and adjudicative functions does not, without more, constitute a due process violation,” *id.* at 58. In *Withrow*, a state medical board was responsible for both investigating charges of misconduct against physicians and also determining whether to impose disciplinary sanctions. *See id.* at 46. The Supreme Court held that there was no due process violation in combining those roles and explained that “a challenge to this combination of functions ‘assumes too much and would bring down too many procedures designed, and working well, for a governmental structure of great and growing complexity.’” *Id.* at 49–50 (quoting *Richardson v. Perales*, 402 U.S. 389, 410 (1971)). The Court even noted that “[t]he case law, both federal and state, generally rejects the idea that the combination (of) judging (and) investigating functions is a denial of due process.” *Id.* at 52 (quoting 2 K. Davis, *Administrative Law Treatise* s 13.02, p. 175 (1958)). As the Court explained, pointing to the mere combination of roles is not sufficient, because establishing a due process defect requires “overcom[ing] a presumption of honesty and integrity of those serving as adjudicators.” *Id.* at 47. *Withrow* establishes that nothing in the combination of roles in itself

creates an unacceptable risk of bias. *See Ethicon Endo-Surgery, Inc. v. Covidien LP*, 812 F.3d 1023, 1029 (Fed. Cir. 2016) (discussing *Withrow* and other Supreme Court cases and quoting treatise statement that “[t]he Supreme Court has never held a system of combined functions to be a violation of due process, and it has upheld several such systems” (citing 2 Richard J. Pierce, Jr., *Administrative Law Treatise* § 9.9, p. 892 (5th ed. 2010)); cf. *Bakalis v. Golembeski*, 35 F.3d 318, 326 (7th Cir. 1994) (“Partiality will not be presumed simply because the same tribunal investigates and adjudicates [an] employment decision.”).

Moreover, as the D.C. Circuit has pointed out in rejecting a different challenge to the combination of investigating and adjudicating roles in judicial conduct and disability proceedings, there is a particularly high hurdle for overcoming the presumption that decisionmakers can properly separate those roles where the decisionmakers are federal judges who “are called upon every day to put aside considerations not legally relevant to their decisions.” *Hastings v. Judicial Conference of the U.S.*, 829 F.2d 91, 105 (D.C. Cir. 1987). As the D.C. Circuit put it, “[a] judge who can decide a case one way, notwithstanding inadmissible evidence of which he is aware indicating a different result, is not likely to prejudice a fellow judge’s cause.” *Id.*

Our analysis is buttressed by the fact that Congress plainly intended the Chief Judge (and the Committee) to play both investigatory and adjudicatory roles. The Act requires the Chief Judge to conduct preliminary inquiries, to identify complaints, and to serve on the special committees he or she appoints. *See* 28 U.S.C. §§ 351(b), 352(a), 353(a). The special committee is statutorily charged with both investigating and recommending a decision. *See id.* § 353(c). And the commentary to the Rules explains that the Act and the Rules deliberately combine investigative and adjudicatory functions as part of the goal of creating an entirely in-house, self-policing mechanism for the judiciary. Rule 13

cmt. Congress also requires that the Chief Judge serve on the circuit's judicial council. 28 U.S.C. § 332(a)(1) ("The chief judge of each judicial circuit shall call, at least twice in each year and at such places as he or she may designate, a meeting of the judicial council of the circuit, *consisting of the chief judge of the circuit, who shall preside . . .*" (emphasis added)). Thus, Congress purposefully and knowingly created a statutory rubric in which every chief judge of every circuit court would initiate a complaint, investigate and make recommendations, and ultimately participate in the decision. This is not unique to the Federal Circuit. And had this been transferred to another circuit, that circuit's chief judge would be required by statute to preside over the investigation and participate in the judicial council's adjudication as well.

For all these reasons, we see no due process violation in the combination of roles assigned to the Chief Judge (or to the Committee) under the Rules.

Second, Judge Newman complains that members of the Committee and members of the Judicial Council are potential witnesses and thus cannot serve as decisionmakers. *See* July 5 Brief at 5–6; *see also* May 10 Letter at 5 ("[E]very member of the Federal Circuit Judicial Council is expected to be a *witness* in this process, [and] it is difficult to understand how these individuals would not be disqualified from serving as *adjudicators* in the same process." (emphases in original)). As a threshold matter, that concern plainly does not apply to the proceeding *now*—that is, the narrow proceeding to determine whether Judge Newman's refusal to cooperate constituted misconduct. As the Committee has explained, whether Judge Newman's responses to the Committee's orders constitute misconduct can be determined on the paper record and there are no relevant witnesses. *See* June 1 Order at 4–5. And Judge Newman has expressly agreed with that assessment. *See* June 15 Letter at 3. Thus, Judge Newman has no claim that judges are

witnesses in this misconduct proceeding as it is currently framed.

Judge Newman's argument, therefore, must be that *earlier* in this proceeding when it was *possible* that the proceeding would go to a decision on whether Judge Newman suffered from a disability, it was *possible* that judges could be witnesses, and *that* justified her refusal to cooperate. That argument is not persuasive. The mere possibility that some judges on the Judicial Council might become witnesses provided no justification for a blanket refusal to cooperate. To the extent that any judges became witnesses, they could, if necessary, be recused from the Judicial Council's role in this proceeding and the Judicial Council could continue to function without them. Indeed, the Rules contemplate that any member of the Judicial Council who becomes a witness may be disqualified, *see* Rule 25(a), but the Judicial Council would not be precluded from acting on the Committee's report and any petition for review filed by Judge Newman. *See* Rule 20(d) ("Judicial-council action must be taken by a majority of those members of the council who are not disqualified.").

Judge Newman insists that it was not merely *possible* that some judges would become witnesses. Instead, she appears to take the view that—when it looked as if this proceeding might go to a hearing to determine whether she suffers from a disability—it was inevitable that *all* of the judges on the Judicial Council would become witnesses. *See* May 10 Letter at 5 ("[E]ach and every member of the Federal Circuit Judicial Council is expected to be a *witness* in this matter." (emphasis in original)). She has asserted different rationales for that proposition, but none is persuasive.

In her July 5 Brief, Judge Newman asserts that the March 24 Order identifying a complaint relies in part on statements about Judge Newman's behavior "during

deliberative proceedings” and that judges would be the “sole witnesses” who could prove those “allegations.” July 5 Brief at 5. That argument proceeds on the mistaken premise that the information described in the March 24 Order functions as some sort of indictment or list of elements that must be proven in the subsequent proceeding. That is incorrect. Once a special committee is appointed, it is up to the Committee to determine the best way to frame an investigation to address the concerns raised in the complaint. And as explained above, in this case the Committee quickly determined that testimony from judges about interactions with Judge Newman—particularly interactions related to the process of deciding cases—should be *excluded* from the Committee’s inquiry because that information was unnecessary and because information regarding delays in case processing would be more objective if obtained from the Clerk’s Office data. *See supra* pp. 21, 32–33. As a result, from a very early stage, there was no prospect that the inquiry framed by the Committee would result in judges becoming witnesses.

Elsewhere, Judge Newman has argued that all members of the Judicial Council were certain to become witnesses because she herself intended to call them. *See, e.g.*, May 10 Letter at 5. That argument, however, misunderstands Judge Newman’s ability to determine the scope of this proceeding. The Committee has authority to control the scope of the investigation as it deems appropriate. *See* Rule 13. Given the importance that the *Adams* case placed on the need for an independent medical evaluation to reach a determination on mental disability, it was apparent to the Committee from the outset that the proper approach to this inquiry was to gather objective data from the Clerk’s Office on Judge Newman’s delays and information from Judge Newman’s interactions with court staff to determine whether that information provided a reasonable basis for seeking medical examinations.

Given that approach, there was no realistic basis on which Judge Newman could ever insist on making *all* members of the Judicial Council witnesses. Under Rule 15(a)(2), Judge Newman has the right merely to *suggest* witnesses to the Committee during the investigation, not an unconstrained right to determine who is a witness. And even if the proceeding had gone to a hearing under Rule 14, Judge Newman's right to compel witnesses, *see* Rule 15(c), would necessarily be limited by principles of relevance and cumulativeness. Even if it arguably would have been relevant for Judge Newman to call one or two judges to testify about their impressions of her mental state (which is itself doubtful given that evidence gathered by the Committee concerning interactions with staff would not have put her interactions with judges at issue), she could not have insisted on calling *all* judges as witnesses. The Committee could reject that gambit as unnecessarily cumulative. *Cf. Adams*, C.C.D. No. 17-01, at 12 n.5 (noting that the special committee rejected the subject judge's effort to call some witnesses at the hearing as "unnecessary and overly broad"). And the Committee could especially reject the effort to call all judges where, as here, it would be transparent that Judge Newman was simply attempting to force recusals in order to hobble the ability of the Committee or the Judicial Council to decide this matter. The Rules themselves address a similar issue when a complainant names multiple judges in a complaint with the apparent purpose of disqualifying judges. Rule 25 permits judges so named to participate in consideration of the complaint in order to prevent gaming the system. *See* Rule 25(g)(1); *cf. also In re Allied-Signal Inc.*, 891 F.2d 967, 970 (1st Cir. 1989) (noting the "need to prevent parties from too easily obtaining the disqualification of a judge, *thereby potentially manipulating the system for strategic reasons*" (emphasis added)).

Thus, given the way the Committee framed its inquiry, there was never a realistic prospect that Judge Newman

could have a legitimate basis for calling *every* judge on the Judicial Council as a witness. It was never inexorably the case that all—or even many—members of the Judicial Council would be witnesses in this proceeding. As a result, Judge Newman had no justification for her blanket refusal to cooperate at the outset based on the theory that members of the Judicial Council would be witnesses.

To the extent Judge Newman intends to argue that judges on this Court necessarily have some personal knowledge about her current mental state simply because they interact with her and that such knowledge alone raises a due process issue for judges sitting on this proceeding, that argument would prove too much. Due process does not require that a decisionmaker be totally ignorant concerning background information involving parties. As this Circuit has explained in cases in the employment context, there is nothing inherently wrong with a deciding official having “background knowledge” about a situation or even the “facts of the case,” as long as the official can decide the matter based on the record. *Norris v. SEC*, 675 F.3d 1349, 1354 (Fed. Cir. 2012); *cf.* Charles Gardner Geyh & Kris Markarian, *Judicial Disqualification: An Analysis of Federal Law*, 2020 WL 13401932 (3d ed., 2020) (“Judges often cannot avoid some acquaintance with the underlying parties or events that give rise to litigation, particularly in smaller communities. Acquaintance, by itself, will not require disqualification.”). As explained further below, moreover, the Rules implicitly reject any such due process argument, because they are plainly structured to allow circuit judges—who will necessarily have some interaction with their colleagues in the same circuit—to sit on disability proceedings concerning those colleagues.

Judge Newman’s arguments fare no better when viewed under the lens of the judicial recusal statute, 28 U.S.C. § 455. Assuming, *arguendo*, that statute applies in this context, it does not disable either this Committee or

the Judicial Council from proceeding in this matter. Each judge on this Committee carefully considered whether recusal was required under § 455 and determined that it was not. To the extent Judge Newman intends to argue that personal interactions with her necessarily give every judge on this Court “personal knowledge of disputed evidentiary facts concerning the proceeding,” 28 U.S.C. § 455(b)(1), we conclude that is incorrect. It would present a different question if a particular interaction between judges provided the core evidence of suspected disability and that interaction was likely to be a subject of dispute at a hearing. Judges involved in that interaction would likely need to recuse.²² But that is not this case. There were no personal interactions between Judge Newman and other judges that would come up as disputed facts. And whatever general knowledge each judge might have about Judge Newman based on personal interactions certainly would not be a “disputed evidentiary fact” in the proceeding.

In analyzing how § 455 should apply in this context, we think it is also instructive that the Judicial Conference and Congress plainly contemplated that judges with some personal knowledge of their colleagues would sit on disability proceedings concerning those colleagues. Rule 25 specifies

²² Judge Newman has made much of the fact that, in *Adams*, no district judges from Judge Adams’s district sat on the special committee or Sixth Circuit judicial council deciding that case. *See, e.g.*, July 5 Brief at 8. In that case, however, the complaint against Judge Adams had been filed *by four district judges* in his district and the entire matter arose from interpersonal disputes among the judges and magistrate judges in that district. Contrary to Judge Newman’s suggestion, that case provides no support for the general proposition that judges on a given court may not sit on a disability proceeding involving another judge on the same court.

particular standards for disqualification. And the commentary to that rule makes it express that “a judge is not disqualified simply because the subject judge is on the same court” and that bias or prejudice warranting disqualification must be “created by circumstances other than an association with the subject judge as a colleague.” Rule 25 cmt. By design, the statute and rules anticipate that judges will institute, investigate, and ultimately decide disability proceedings about their colleagues. *See, e.g.*, 28 U.S.C. §§ 351–353 (requiring chief judge to receive and review complaint and form special committee); Rule 11(a) (requiring chief judge to review complaint), 12(a) (requiring the special committee to consist of chief judge that identifies complaint). Congress and the Judicial Conference were certainly aware of § 455, and also of the reality that “[j]udges at every level of the system interact with each other frequently and in many ways.” Irving R. Kaufman, *Chilling Judicial Independence*, 88 *Yale L.J.* 681, 711–12 (1979) (describing how circuit and district judges, especially within a single circuit, commonly get to know each other).²³ The way Congress structured the Act and the Judicial Conference structured the Rules suggests that both bodies concluded that § 455 posed no barrier to judges deciding disability proceedings about their fellow judges, including those on the same court.

If Judge Newman were correct, no circuit judge could ever sit on a disability proceeding concerning another circuit judge—and likely many district judges—in the same circuit, because they would have “personal knowledge” about that judge. Under that view, the Rules as written

²³ Then-Chief Judge Kaufman, of the Second Circuit, testified before the House committee responsible for what became the 1980 Act, and the committee report cited the article quoted in text. *See* H.R. Rep. 96-1313 at 3, 6 (1980).

would violate § 455. We do not see any basis for reading § 455 that broadly.

Third, Judge Newman argues that Court employees will not give candid testimony in a proceeding run by the Judicial Council because they will feel pressure to curry favor with their employers. July 5 Brief at 7. This argument is wholly insubstantial. Judge Newman cannot simply assert a likelihood of biased testimony without providing some evidence to demonstrate circumstances that would likely overcome a witness's obligation to testify truthfully. The mere fact that court staff are employed by the Circuit is not sufficient, and Judge Newman cites no authority whatsoever supporting the novel presumption of bias she asserts. And as a practical matter, if employees were presumed to give biased testimony in tribunals run by their employers, the judiciary's EDR system and other government employment dispute-resolution systems would be called into question. We reject this argument.

Fourth, Judge Newman argues that keeping this proceeding in the Federal Circuit violates due process because this Court has a specialized bar, and members of that bar will not want to come forward as witnesses attesting to Judge Newman's competence because they fear repercussions from the Judicial Council. According to Judge Newman, that limits Judge Newman's ability to mount a defense. *See* July 5 Brief at 8. This argument is meritless. To start, of course, there are no witnesses needed in this proceeding as it has been narrowed. In addition, litigants face myriad reasons why potential witnesses may be reluctant to participate in a proceeding voluntarily, and that does not raise a due process issue. Moreover, if this proceeding had gone to a hearing at which Judge Newman could present witnesses, she would have had the benefit of compulsory process to obtain any critical testimony. *See* Rule 15(c). Even if members of the bar of this Court were

reluctant to be witnesses, that would raise no inherent unfairness in this proceeding.

b. The Actions of the Judicial Council and the Committee Do Not Indicate Bias.

Judge Newman next argues that the actions of the Judicial Council and the Committee have shown bias against her and that this evidence of bias justified her refusal to cooperate. *See* July 5 Brief at 9–12; May 25 Letter at 2. We note at the outset that the Judicial Council orders Judge Newman cites are not a part of this proceeding and were issued by the Council under its authority independent of this particular proceeding. Nevertheless, because Judge Newman points to alleged bias supposedly revealed in those orders as justification for her actions, we address her arguments here. For the reasons below, we reject Judge Newman’s assertions.

i. The Judicial Council’s Actions Suspending New Case Assignments Do Not Show Bias.

First, Judge Newman claims that the Judicial Council’s actions on March 8 and June 5 excluding her from the rotation for assigning new cases were improper and necessarily show bias. In Judge Newman’s view, halting new case assignments can be understood only as a form of sanction that would arise from this misconduct and disability proceeding and halting case assignments before any conclusions were reached in this proceeding reflects a form of verdict before trial. *See* July 5 Brief at 9–10.

That is incorrect because Judge Newman is ignoring the Judicial Council’s independent authority under 28 U.S.C. § 332(d) to make “all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit.” That authority necessarily includes the power to suspend new case assignments where a judge

has a backlog of cases interfering with the efficient administration of the court's business. *See* June 5 Order at 5; *see also U.S. v. Colon-Munoz*, 318 F.3d 348, 354-55 (1st Cir. 2008) ("An order of the Judicial Council reassigning cases . . . to address judicial delay falls within the broad mandate of section 332(d)."); *see* Kaufman, 88 Yale L.J. at 708 & n.153 (asserting availability of this section to preclude new assignments to a judge with undue backlog). The Council's March 8 decision was not memorialized in a written order, but it readily stands on the basis of Judge Newman's indisputable backlog of cases. And even if the Council had concerns about disability, it is not bias to recognize that such concerns bear on whether Judge Newman's backlog was likely to get worse if she continued to take on new cases.

The Council, in response to Judge Newman's complaints, issued an entirely new order on June 5 addressing the issue of case assignments for Judge Newman. Treating Judge Newman's complaints as a request for reconsideration, the Judicial Council considered the matter *de novo* and made clear that it was suspending new case assignments based only on its authority under § 332(d) and solely to address Judge Newman's delay in issuing opinions. June 5 Order at 5. Not satisfied by that result, Judge Newman now claims that the very act of issuing a new order and providing a full explanation for the Council's action grounded in § 332(d) is evidence of bias. Contrary to Judge Newman's assertions, however, we do not think that entertaining Judge Newman's assertions of error, reconsidering *de novo* the Council's prior actions, and issuing an order explaining the Council's decision and pinpointing a particular legal basis can somehow be evidence of bias.

Judge Newman also asserts that the June 5 Order includes factual errors. In particular, she claims that, when panel assignments were made (in February 2023) for the Court's April 2023 sitting, she was not actually in violation of an internal circuit rule precluding case assignments to a

judge with a backlog of cases crossing certain limits. *See* July 5 Brief at 11. Under CP #3 ¶ 15, a judge may not be assigned new cases if (among other triggers) he or she has two opinions pending that are over 365 days old. But even if the June 5 Order had made a factual mistake concerning the application of CP #3, a factual error is not evidence of bias. *See, e.g., Anderson v. Williamson*, 47 F. App'x 333, 335 (6th Cir. 2002); *Committee v. John Carroll Univ.*, No. 1:18CV01372, 2019 WL 2295347, at *2 (N.D. Ohio May 30, 2019) (“[M]istakes by a judge of fact and law, alone, are insufficient to demonstrate personal bias requiring recusal.”). Indeed, here, on January 31, 2023, Judge Newman’s judicial assistant emailed the Chief Judge’s chambers concerning eligibility for the April 2023 sitting and stated that “Judge Newman advised me our panels may be limited until our back log of older cases is reduced.” Ex. 7.

In any event, Judge Newman, in now alleging error, has the facts wrong. As April panels were being prepared in early February, Judge Newman had two cases that were over 365 days old. One was [REDACTED], in which the opinion had been assigned to Judge Newman on December [REDACTED], 2021. Contrary to Judge Newman’s assertions, that case was not stayed after being assigned to her for authorship, and as Judge Newman acknowledges, it had been pending for over 420 days when [REDACTED] paneling was occurring. The panel in [REDACTED] did order supplemental briefing (without staying the case), but even if the entire 30-day period for that briefing is excluded from the calculation, the case had still been pending for well over 365 days. The second case was [REDACTED], in which the opinion had been assigned to Judge Newman on

February █, 2022.²⁴ The Clerk’s Office conflicts screening emails with tentative panel assignments for the April 2023 sitting were circulated on February █, 2023, and thus █ hit the 365 day mark the next day—before the process of assigning panels was complete. There is no bright line date on which the time periods in CP #3 are applied, and the Chief Judge’s chambers appropriately relied on the email from Judge Newman’s chambers in concluding that Judge Newman did not anticipate issuing the █ opinion before paneling was finalized and that she was subject to CP #3. Especially given the contemporaneous email from her own chambers acknowledging that her case assignments would be restricted due to her backlog, application of CP #3 to the April 2023 sitting in no way supports Judge Newman’s allegation that “the Judicial Council cannot be trusted to act neutrally.” July 5 Brief at 11.

Judge Newman also argues that the Judicial Council’s actions are *ultra vires* because she is a member of the Judicial Council but was neither given notice of the meetings before the March 8 and June 5 Orders nor permitted to participate in the Council’s deliberations. See July 5 Brief at 10. There was nothing improper, however, in proceeding without Judge Newman when Judge Newman and her delays in issuing opinions were the very issue that the Judicial Council was meeting to address. The Judicial Council properly operated on the view that Judge Newman would be recused in any decision on that matter. Indeed, in the analogous situation when a judge is the subject of a misconduct or disability complaint under the Act and the Rules, the judge is expressly disqualified from participating in the Judicial Council on that matter. See Rule 25(b).

²⁴ Judge Newman addresses the timing of her opinion in a different case, █. That case, however, did not place her in violation of CP #3.

The Judicial Council properly proceeded on the understanding that a similar principle requiring her disqualification would apply here. This is a case in which the maxim that “no man can be a judge in his own case,” *Williams*, 579 at 8, appropriately applied.

Judge Newman points to language in 28 U.S.C. § 332(a)(6) stating that “[e]ach member of the council shall attend each council meeting unless excused by the chief judge.” That statute, however, imposes an obligation on individual judges to attend Judicial Council meetings. It does not set a super-quorum requirement disabling the Judicial Council from acting if some members are not present.

The Committee concludes that, where the issue before the Judicial Council involved Judge Newman’s extraordinary delays in issuing opinions and an appropriate response to ensure the efficient administration of the Court’s business, it was proper for the Judicial Council to act without Judge Newman’s participation. Its decision to do so was not unlawful and provides no evidence of bias.

ii. The Committee’s Prior Actions Do Not Show Bias.

Judge Newman has also argued that various actions by the Chief Judge and/or the Committee show bias. *See* July 5 Brief at 12 n.11. None of her arguments is persuasive.

To start, Judge Newman has repeatedly charged that prior orders of the Chief Judge or the Committee contain factual errors. As noted above, even if there were factual errors in prior orders, that would not show bias. *See, e.g., Anderson*, 47 F. App’x at 335. And as explained below, none of Judge Newman’s particular allegations of error involves any circumstances to suggest bias.

Judge Newman argues that the March 24 Order was wrong in suggesting that Judge Newman’s caseload was reduced immediately following a cardiac event in the

summer of 2021. *See* April 21 Letter at 1. After reviewing data from the Clerk’s Office, the Committee concludes that Judge Newman is correct that her caseload was not significantly reduced compared to her colleagues until May 2022. That error, however, provides no evidence of bias and certainly does not justify Judge Newman’s refusal to cooperate in this entire proceeding. The March 24 Order did not purport to set out any final findings. The purpose of that order was merely to note some initial information to determine *whether* an investigation was warranted. It should not be surprising that some information in such an initial document might later be found to be inaccurate. That is what investigations are for. Moreover, especially given the preliminary nature of the March 24 Order, an error in identifying the exact time at which Judge Newman began taking a reduced case load was immaterial. The fact remains that by the time the March 24 Order was entered, Judge Newman had had a reduced caseload for nearly a year (and had not been sitting on motions panels since January 2021), and yet still had an extraordinary backlog of opinions. At least with respect to cases, the central point in the March 24 Order was that Judge Newman had an extraordinary backlog, especially for a judge with a reduced caseload. And that point was entirely accurate. An error as to when the reduced caseload began was immaterial to the decision in the March 24 Order to identify a complaint and provides no evidence of bias.

Next, Judge Newman has argued that the March 24 Order was wrong in suggesting—in identifying a complaint—that Judge Newman suffered a “heart attack” in the summer of 2021 and insists that she never suffered a “heart attack.” July 5 Brief at 3. On that basis, she even accuses the Committee, when referring back to the March 24 order concerning “the incidents of 2021 and 2022” in its initial order concerning medical records (April 17 Medical Records Order at 1), of “completely fabricat[ing] ideas

about her prior medical history.” *Id.* In its May 16 Order, however, the Committee made clear that “heart attack” may not have been the correct term to use in the Committee’s request for medical records and clarified that it sought medical records broadly about any “cardiac event” that Judge Newman had suffered in the summer of 2021. May 16 Order at 4–5. Although Judge Newman continues to insist that she did not have a “heart attack” and continues to berate the Committee for suggesting that she did, she has pointedly refused to say whether she suffered any “cardiac event” in the same time period. *See* Oral Arg. Tr. 17:23–18:5; 18:22–19:4; 20:11–19. Notably, Judge Newman has now submitted a physician’s report acknowledging that she has a pacemaker and suffers from [REDACTED] [a cardiac condition], a cardiac condition which Judge Newman’s counsel agreed includes among its symptoms: confusion, chest pain, fainting, and dizziness.²⁵ *See* Ex. 8 (“Rothstein Report”) at 1; *see also* Oral Arg. Tr. at 19:9–19. Judge Newman’s carefully calibrated focus on the term “heart attack” suggests that her protests may well be a matter of parsing terminology rather than relevant substance. In any event, the initial suggestion that Judge Newman suffered a “heart attack” plainly provides no indication of bias. Judge Newman’s refusal to provide the ordered medical records and undergo the ordered medical examinations has thwarted the ability of the Committee to ascertain the exact nature of the cardiac condition that Judge Newman does have and the impact it may have on her ability to serve as an active judge.

Judge Newman also complains that short deadlines imposed by the Committee during the early stages of this proceeding are evidence of bias. *See* July 5 Brief at 12 n.11.

²⁵ Judge Newman’s counsel stated that Judge Newman has had a personal relationship with Dr. Rothstein for “some time.” Oral Arg. Tr. at 38:18–24.

That is also unpersuasive. The deadlines she identifies merely required Judge Newman to indicate whether or not she would *agree* to medical examinations and to produce medical records. They did not require her to actually complete her cooperation on those points in the specified time frame. In any event, the initial deadlines became irrelevant long ago as the Committee repeatedly extended deadlines, issued further explanations for its orders, and allowed Judge Newman more time to respond. Judge Newman cannot continue to point to short deadlines that were never enforced as supposed evidence of bias when the reality is that, since the time it first ordered medical examinations, the Committee effectively allowed Judge Newman 48 days (from April 7 until May 25) to provide a final response as to whether or not she would agree to cooperate.

Judge Newman's further complaints about the proper interpretation of statistics in judicial conduct and disability cases, *see* July 5 Brief at 12, are insubstantial. Disputes about the proper interpretation or relevance of statistics do not evidence bias.

iii. The Judicial Council Has Not Deprived Judge Newman of Equipment or Necessary Staff.

Judge Newman has also complained at various points in her submissions that the Judicial Council allegedly deprived her of staff or office equipment necessary for her to do her job. *See, e.g.*, April 21 Letter at 2; July 5 Brief at 2 n.2. To the extent Judge Newman intends these allegations to support her claims of bias or to explain or justify her significant delays in deciding cases, the Committee addresses them here. All of these claims are incorrect.

With respect to Judge Newman's chambers staff, as explained above, on April 19, 2023, one of Judge Newman's clerks and her judicial assistant resigned from her chambers and requested no further contact with her chambers.

See supra pp. 43–45. As the Committee explained in its May 16 Order, because of the pending EDR matter related to her judicial assistant, on April 20, the Judicial Council initially placed a hold on hiring staff for Judge Newman’s chambers. Within four days, by April 24, the Council lifted that hold to permit Judge Newman to bring back (at her request) a judicial assistant who had previously worked for her and had retired. Further, on April 27, Judge Newman was informed that she could advertise to hire a permanent replacement. May 16 Order at 12 & n.3; *see also* ██████████ Aff. [7] ¶ 2; Ex. 4 at 2. After that point, any lapse in time that occurred in moving the hiring process forward was attributable to Judge Newman. As staff have recounted, they repeatedly explained to Judge Newman the terms on which her retired judicial assistant could be rehired, but Judge Newman seemed unable to understand or remember repeated explanations, and her inaction delayed the hiring process. *See* Ex. 4; ██████████ Aff. [7] ¶¶ 1–5; *id.* ¶ 3 (describing having “over 20 email and phone call exchanges with Judge Newman . . . trying to get her approval,” Judge Newman taking a “long time” and having to “answer the same questions repeatedly”). As of June 14, Judge Newman’s prior judicial assistant had been brought back temporarily, and while Judge Newman’s permanent judicial assistant position was advertised in early May and Judge Newman has been given multiple applications received by the Court, Judge Newman has not moved forward to hire a permanent judicial assistant. Contrary to Judge Newman’s claims, the Court approved her temporary judicial assistant 5 days after her judicial assistant resigned, and any delays in her acquisition of secretarial services were due to Judge Newman’s inaction or confusion.

Judge Newman has not been permitted to hire an additional clerk to replace the one who resigned in April because she has three full-time clerks, which is more than sufficient for the needs of her chambers given her reduced

case load. Contrary to the apparent assumption underpinning her complaint, Judge Newman is not automatically entitled to four law clerks. Instead, by statute circuit judges “may appoint *necessary* clerks and secretaries.” 28 U.S.C. § 712 (emphasis added). Put simply, Judge Newman has no need for more than three full-time law clerks and a judicial assistant. Despite having no new cases assigned in April, May, June, July, August, or September, and while having three full-time clerks, Judge Newman still currently has a backlog of the same 7 opinions she has had for months. It is plainly not a lack of clerk assistance that is preventing Judge Newman from completing her opinions.

Judge Newman’s complaint about equipment appears to relate to the computer used by the judicial assistant who left her chambers in April. Affidavits from staff members recount Judge Newman’s repeated accusations that this computer was “illicit[ly]” removed, ██████████ Aff. [8] ¶ 30, or “stolen,” ██████████ Aff. [6] ¶ 4, with her chambers’ information on it. *See also* ██████████ Aff. [6] ¶ 5 (describing Judge Newman “walking back and forth mumbling about how her computer and phone had been taken away from her” even though “that was not the case”); ██████████ Aff. [5] ¶¶ 3, 5 (“Judge Newman was pacing back and forth and visibly angry and frustrated . . . I found Judge Newman’s behavior during this whole event to be very bizarre and confusing.”). They also recount staff’s repeated efforts to explain to Judge Newman, over and over again, that no information from her chambers was stored on that computer and instead that it was all on her chambers’ shared drive. *See* ██████████ Aff. [8] ¶¶ 27–31; ██████████ 18 Aff. [6] ¶ 5.

At bottom, Judge Newman’s complaints about this computer are a product solely of her apparent inability to understand that no information from her chambers was

stored on the hard drive (C: drive) on that computer. Instead, all information related to her chambers was transferred to—and is still available on—her chambers’ shared drive. Judge Newman has not been deprived of any equipment (or any data stored on any equipment) needed for her work. In fact, Judge Newman and her four chambers’ employees collectively have eight Federal Circuit computers, all with access to her shared drive. And IT and Clerk’s Office staff have repeatedly offered to help Judge Newman locate any of the files on her shared drive that she misplaced. *See* ██████████ Aff. [6] ¶¶ 2–6; ██████████ Aff. [5] ¶¶ 2–4; ██████████ Aff. [8] ¶¶ 35–36; Ex. 6 at 15 (Clerk of Court explaining “we have offered repeatedly to assist you with locating any files you cannot find or access. However, through our many conversations, we have yet to learn of any file or record of your chambers that is actually missing or unavailable.”).

Finally, Judge Newman has vaguely claimed that her “use of the Court’s communication systems” has been “restricted.” April 21 Letter at 2. The vague accusation is unsubstantiated. And as the affidavits from IT personnel extensively explain, Judge Newman frequently forgets how to log on to the Court’s systems and forgets how the telephone system works, including the volume control on her telephone. *See, e.g.,* ██████████ Aff. [1] ¶¶ 2–6; ██████████ Aff. [4] ¶¶ 2–19. As far as the Committee can tell, user error is the most likely explanation for any difficulties Judge Newman experiences with the Court’s communications equipment.

c. Judge Newman’s Requests for Transfer Lack Merit.

As noted above, Judge Newman advanced her due process arguments and related claims of bias largely to support the assertion that “neither the Judicial Council of the Federal Circuit nor this Committee is an appropriate

bo[d]ly to investigate these (meritless) allegations,” July 5 Brief at 16, and to support a transfer of this matter to another circuit. Those arguments lack merit for the reasons explained above. Her requests for transfer also lack merit for additional reasons, especially at this stage in the proceedings. The Committee has been able to conduct this investigation more efficiently than would have been possible if the matter had been transferred to another circuit. And now that this investigation is investigation has been completed on all that the Committee believes needs to be reached given its findings and recommendation, transferring the case at this point would be grossly inefficient and counterproductive.²⁶

We note at the outset that transfer of a matter involving an investigation into judicial misconduct or disability is possible only in “exceptional circumstances.” Rule 26. As the Committee explained in its May 3 Order, this case involves many of the factors that the Breyer Committee Report found to counsel *against* transfer. See May 3 Order at 10–11; Implementation of the Judicial Conduct and Disability Act of 1980, Report to the Chief Justice of the Judicial Conduct and Disability Act Study Committee, 239 F.R.D. 116, 215 (Sept. 2006) (“Breyer Committee Report”). In an investigation involving alleged disability, the Committee believes that knowledge of “local circumstances and personalities” is an advantage for an investigating committee. Breyer Committee Report, 239 F.R.D. at 215. Proximity to court staff—particularly because the judges and staff in this circuit all work in the same building—has allowed the

²⁶ To the extent Judge Newman’s July 5 Brief constitutes a renewal of her request that the Chief Judge or the Judicial Council request a transfer of this matter, the Chief Judge denies the request under Rule 26 in her capacity as Chief Judge as part of this Report. The Committee recommends that the Judicial Council similarly deny the request.

Committee to operate efficiently and expeditiously in investigating this matter. The Rules and Breyer Committee Report make clear that likely delays caused by transfer are a factor weighing *against* transfer. Indeed, “transfers may increase time and expense if there is the need to ship files, arrange witnesses, and handle other matters from a distance.” *Id.* Delays undoubtedly would have been the result of transfer here.

In addition, the Committee believes that the easy accessibility of the Committee to court staff has allowed witnesses to volunteer information in a fashion that simply could not have happened if the matter had been transferred to another circuit. On more than one occasion, court staff have reported incidents with Judge Newman to the Committee in almost real time. See ██████████ Aff. [6] ¶¶ 1–2, 5–8; ██████████ Aff. [8] ¶ 36. The staff immediately reported the information to the Clerk of Court who forwarded this information to the Committee which was able to speak to the employee on the same day. ██████████ Aff. [8] ¶ 36.

When Judge Newman effectively threatened to terminate the employment of her judicial assistant for staying at his assigned workstation outside her chambers (which had been created as an alternative work arrangement under the Court’s EDR procedures), he came to the Committee immediately, visibly upset. See ██████████ Aff. [2] ¶ 34; ██████████ Aff. [10] ¶¶ 8–9. When one of Judge Newman’s clerks, ██████████, declined to work on Judge Newman’s defense in this matter (which is not court work) and found that he could no longer tolerate the atmosphere in her chambers, he came to the Committee to explain his concerns and ask for help. See ██████████ Aff. [11] ¶¶ 6–8, 17. Our Clerk of Court has come to the Committee on several occasions to report troubling interactions with and accusations by Judge Newman detailed in his affidavits. See generally ██████████ Aff. [8] & ██████████ Aff [14]. None of

these meetings were scheduled and none were requested by the Committee. In each of these instances, the employees came to the Committee to report concerns. And for some of these employees, not only was the Committee able to receive their testimony, but where possible, alternative work arrangements were made to lessen the impact of these disturbing exchanges. None of these measures undertaken to support and protect employees would have been possible had this case been transferred to another circuit.

At times, throughout this investigation, incidents such as these between staff members and Judge Newman were occurring weekly or even more frequently. The Committee believes that witnesses would have been chilled from participating in the process in a similar manner if they were required to contact federal judges in another circuit who were not known to them in order to report information.

Put simply, another court could not, from afar, create an environment in which this Court's staff could raise concerns based on their interactions with Judge Newman in an almost real-time fashion. And without that ready ability to report incidents, the Committee believes that important information in this investigation might have been lost. Particularly in this case, placing distance between the individuals who witness and experience a subject judge's behavior and the investigating body would have inhibited, not promoted, the aims of the Act. And of course, another circuit would not have been able to intervene promptly to protect or relocate these employees.

Judge Newman claims that "since the publication of the Breyer Report, *supra*, every single complaint of misconduct against a circuit judge that was not summarily dismissed has been transferred to another circuit's judicial council for investigation." July 5 Brief at 6. As support, she cites a small number of examples over the last decade.

As an initial matter, transfer can only be sought in “exceptional circumstances.” Rule 26. Her examples and statistics do not establish the asserted uniformity of practice.²⁷ And none of the cited cases seems to have involved disability as the core subject of the proceeding or refusal to cooperate as misconduct in thwarting the disability determination.²⁸ A case-specific assessment of transfer is

²⁷ Statistics from the Administrative Office indicate that in 2021 for example, four complaints were referred to special committees for investigation and zero cases were transferred. These same statistics show that 18 of the complaints were resolved through voluntary corrective action or intervening events (such as a judge taking senior status). It is unclear whether these were proceedings against district court or circuit judges. See Table S22, Judicial Complaints—Complaints Commenced, Terminated, and Pending with Allegations and Actions Taken Under Authority of 28 U.S.C. 351–364 During the 12-Month Period Ending Sept. 30, 2021. In 2018, the statistics show that only 1 case was transferred, while 8 complaints were referred to special committees. In 2017, 18 cases were referred to special committees and 0 were transferred. In 2016, 4 were referred to special committees and 0 transferred. See Table S22, Judicial Complaints—Complaints Commenced, Terminated, and Pending with Allegations and Actions Taken Under Authority of 28 U.S.C. 351–364 During the 12-Month Period Ending Sept. 30, 2018, 2017, 2016 (all available at <https://www.uscourts.gov/statistics-reports/caseload-statistics-data-tables> (last visited July 31, 2023)).

²⁸ The most relevant precedent for this matter appears to be the proceeding conducted by the Sixth Circuit concerning District Judge John R. Adams and an investigation into whether he suffered from a mental or emotional

required, with transfer being the exception, as made clear by the Act and Rules designed for proceedings that involve circuit and district judges alike. For the reasons stated, based on considerations set forth in the Breyer Report, we think it was proper in this matter not to request transfer.

Finally, transferring this matter at this point would be enormously wasteful and counterproductive. The Committee has conducted more than twenty interviews with court staff. It has entertained extensive briefing from Judge Newman, entered multiple orders explaining its requests for cooperation from Judge Newman, and heard oral argument. Transfer at this stage could potentially render all of this effort wasted, because a transferee circuit could choose to start the entire process over. *See* Rule 26 cmt. (“Upon receipt of a transferred proceeding, the transferee judicial council shall determine the proper stage at which to begin consideration of the complaint. . .”). Indeed, as Judge Newman has made clear, securing a complete do-over is her objective. She has pointedly reminded the Committee that the “effect” of a transfer is that “the transferee council is not bound by any evidence, reports, or decisions made by the transferor council” and expressly “reserve[d] the right to request that the transferee council restart the entire process.” May 10 Letter at 5. Even putting aside the inefficiency in such a result, and the burden on a transferee council, it would be unfair to the witnesses who have already been interviewed by the Committee and submitted

disability in which the Sixth Circuit twice denied motions from Judge Adams requesting a transfer of the proceeding to another circuit. *See* Order & Memorandum, *In re Complaint of Judicial Misconduct*, No. 06-13-90009 (Judicial Council of the Sixth Circuit Feb. 22, 2016), at 4 (recounting that Chief Judge Cole of the Sixth Circuit twice rejected requests to transfer because the case did not raise any “exceptional circumstances” warranting such action).

affidavits to be subjected now to a duplicative investigative proceeding.

For all these reasons, Judge Newman's requests for transfer lacked merit when they were originally made, *see* May 3 Order at 10–12, and they particularly lack merit now.

d. There Is No Merit To Judge Newman's Assertion that She Has Cooperated with the Committee's Orders or That Defects in the Orders Justify Her Responses.

Judge Newman has offered various arguments to suggest that she *has* cooperated with the Committee's orders (at least under her definition of the term) or that particular defects in the orders justify her responses. None of these arguments has merit.

To the extent Judge Newman claims that the Committee cannot require her to undergo medical examinations with independent professionals chosen by the Committee and that such an order is "unprecedented," July 5 Brief at 13, we have addressed those arguments and rejected them above. *See supra* Section II.A.

Next, Judge Newman's assertions that she *has* cooperated depend entirely on distorting the meaning of "cooperate" in this context. According to Judge Newman, to "cooperate" means to "work together," and that means that the Committee must work *with her* to reach a compromise when she objects to requests from the Committee. May 10 Letter at 4–5 (seeking to "negotiat[e] the matter" and seeking a "negotiated solution"); May 25 Letter at 1, July 5 Brief at 2. That is incorrect. Standard dictionary definitions make clear that "cooperate" means to "act together *or in compliance*." *Cooperate*, Merriam-Webster Dictionary, available at <https://www.merriam-webster.com/dictionary/cooperate> (last visited July 31, 2023) (emphasis added);

see also *Cooperate*, Cambridge English Dictionary, available at <https://dictionary.cambridge.org/us/dictionary/english/cooperate> (last visited July 31, 2023) (“to act or work together for a particular purpose, *or to be helpful by doing what someone asks you to do*” (emphasis added)). Especially in the context of an investigation, it is acting in compliance with requests from the investigator that constitutes cooperation. That conclusion is buttressed by the fact that nothing in the Rules requires the Committee to negotiate with Judge Newman to reach a compromise solution on every investigative request the Committee makes. To the contrary, Rule 13 unequivocally states that “[a] special committee should determine the appropriate extent and methods of its investigation.” Particularly with respect to medical examinations, moreover, *Adams* makes clear that the Committee may insist on examinations by independent professionals *over a subject judge’s objections* and that failure to comply with such a request is a failure to cooperate.

In her May 25 Letter, Judge Newman objected for the first time to the qualifications of the independent professionals the Committee chose to conduct medical examinations, May 25 Letter at 2, and she now asserts that these professionals are of “unknown qualifications and provenance,” July 5 Brief at 14. This objection is dilatory. In its April 7 Order, the Committee not only provided the names of these professionals and made clear that Dr. ██████ had recommended them (thus explaining their “provenance”),²⁹

²⁹ Dr. ██████ consulted with Dr. ██████ Professor of Psychiatry at Georgetown University School of Medicine, to determine the professionals he would recommend, in part given her familiarity with suitable medical professionals in the local area where the examinations would take place. For an examining neurologist, he

it also provided Dr. ██████'s telephone number so that Judge Newman or her counsel could discuss with him the medical examinations and the professionals who would conduct them. April 7 Order at 2. At argument, counsel for Judge Newman acknowledged that Judge Newman never contacted Dr. ██████ and took no steps to investigate the credentials of the professionals he had recommended beyond looking at their websites. *See* Oral Arg. Tr. at 37:4–9. Having been offered the opportunity to discuss the professionals recommended by Dr. ██████, Judge Newman cannot sit on her hands, do nothing more than look at their websites,³⁰ and at the eleventh hour simply claim that their

recommended Dr. ██████, a board-certified neurologist. *See* ██████ (last visited July 31, 2023). For a neuropsychologist, he recommended Dr. ██████, who is board certified in clinical neuropsychology and who is an approved forensic evaluator for the Commonwealth of Virginia, which allows him to be a court-appointed evaluator in proceedings to determine competency to stand trial and sanity. *See* ██████ (last visited July 31, 2023). All of this information about the selected doctors was readily obtainable through an internet search.

³⁰ If Judge Newman had done an internet search with the names of the doctors who were provided to her as far back as April 7, she would have found their credentials. Dr. ██████ is a board-certified neurologist, and Dr. ██████ is board certified in clinical neuropsychology and is an approved forensic evaluator for the Commonwealth of Virginia, which allows him to be a court-appointed evaluator in proceedings to determine competency to stand trial and sanity. *See* ██████ (last visited

qualifications are unknown to her. She must, at a minimum, interpose some more substantive objection raising a reason to doubt the qualifications of these professionals. It is certainly not the duty of the Committee to *sua sponte* schedule a *Daubert* hearing before ordering Judge Newman to undergo standard medical examinations with professionals recommended by an expert.

With respect to the Committee's requests for medical records, Judge Newman variously asserts that records do not exist or are not relevant, July 5 Brief at 2–3, but her objections do not stand up to scrutiny. As an initial matter, records that the Committee sought relating to treatment regarding “mental acuity, attention, focus, confusion, memory loss, fatigue or stamina,” May 16 Order at 4, are plainly relevant. Judge Newman, however, has refused to state squarely whether such records exist or not.

Next, Judge Newman insists that she has never had a “heart attack” and that records related to a “heart attack” do not exist. As explained above, *see supra* pp. 81–82, Judge Newman appears to be focusing narrowly on the definition of “heart attack” to avoid answering the Committee's request for records. The Committee long ago clarified its request to make clear that it broadly sought records related to a “cardiac event,” May 16 Order at 5, and at oral argument counsel for Judge Newman refused to state whether or not she had suffered a cardiac event in the time period at issue. Oral Arg. Tr. 17:23–18:5; 18:22–19:4; 20:11–19. In addition, the Committee explained to Judge Newman that Dr. █████ informed the Committee that medical records related to a cardiac event may very well shed light on the observed changes in Judge Newman's behavior and the issues of impairment of cognitive functioning the Committee is investigating. He informed the

July 31, 2023); ██████████
 ██████████ (last visited July 31, 2023).

Committee that it would be standard practice for a treating neurologist to consider such records in evaluating impairment issues like those presented here. Judge Newman has never offered a response on those points.

Judge Newman has also submitted her own medical report noting that she suffers from [REDACTED] [a cardiac condition] and has a pacemaker. See Rothstein Report. Records related to treatment for that condition are obviously relevant. According to the Penn Medicine website of the University of Pennsylvania, one of the symptoms of [REDACTED] [the cardiac condition] is “confusion or other changes in mental status.” [REDACTED], Penn Medicine, available at [https://www.pennmedicine.org/for-patients-and-visitors/patient-information/conditions-treated-a-to-z/\[REDACTED\]](https://www.pennmedicine.org/for-patients-and-visitors/patient-information/conditions-treated-a-to-z/[REDACTED]) (last visited July 31, 2023). The Mayo Clinic similarly explains that [the cardiac condition] [REDACTED] can result in “confusion” and “dizziness or lightheadedness.” [REDACTED], Mayo Clinic, available at [https://www.mayoclinic.org/diseases-conditions/\[REDACTED\]](https://www.mayoclinic.org/diseases-conditions/[REDACTED]) (last visited July 31, 2023). And Johns Hopkins advises on its website that one of the complications of [the cardiac condition] [REDACTED] can be impaired blood flow “leading to other organ damage such as brain and kidney function.” [REDACTED], Johns Hopkins, available at [https://www.hopkinsmedicine.org/health/conditions-and-diseases/\[REDACTED\]](https://www.hopkinsmedicine.org/health/conditions-and-diseases/[REDACTED]) (last visited July 31, 2023). At oral argument, counsel for Judge Newman acknowledged that symptoms such as “confusion” “might” show the relevance of Judge Newman’s heart condition to the Committee’s inquiry. Oral Arg. Tr. at 19:25–20:3. He also acknowledged that these were the symptoms of [REDACTED] [the cardiac condition], a condition Judge Newman acknowledges she has. *Id.* at 19:9–19. The medical records at issue thus are plainly relevant, and Judge

Newman's assertions that she cannot understand their relevance has no merit.

Finally, Judge Newman asserts that the Committee's request for an interview with her is "peculia[r] and opa[que]" and she professes to be at a loss to understand the request because—according to her—the Committee asserted that it was "intimately familiar with Judge Newman" and thus should have no need to interview her. July 5 Brief at 3. That distorts what the Committee has said. In denying Judge Newman's request for a transfer, the Committee agreed that, in this case, as the Breyer Committee Report had observed, the "'relative ignorance' of judges in another circuit of 'local circumstances and personalities'" might make them less well suited to resolve this matter. May 3 Order at 10 (quoting Breyer Committee Report, 239 F.R.D. at 215). The Committee never suggested that it had no need to interview Judge Newman. To the contrary, the Committee's May 16 Order noted that Judge Newman had accused the Committee of making factual errors without identifying specifics and explained that an interview would allow her to point out any errors. May 16 Order at 23–24. And far from being a "peculia[r]" request, interviewing the subject of an investigation is an elementary, often essential, step. Indeed, if the Committee had attempted to complete its investigation *without* interviewing Judge Newman, she might have claimed that omission violated her due process rights. Cf. Dani Kass, *Judge Newman Not Sure the Federal Circuit Can Be Salvaged*, available at https://www.law360.com/ip/articles/1698074?nl_pk=1c077ab08b844b7ca04b9be890c8db77&utm_source=newsletter&utm_medium=email&utm_campaign=ip&utm_content=2023-07-13&nlsidx=0&nlaidx=0 (last visited July 31, 2023) (Judge Newman asserting that "she has never been given an opportunity to discuss the claims against her with the chief judge or others involved in the Judicial Conduct and Disability Act investigation").

Judge Newman's asserted grounds for refusing to sit for an interview with the Committee are frivolous.

e. The Neurologist's Report Submitted by Judge Newman Provides No Justification for Her Refusal To Undergo Medical Examinations with Independent Professionals Chosen by the Committee.

Along with her July 5 Brief, Judge Newman submitted a one-and-a-half-page report from a neurologist, Dr. Ted L. Rothstein, who had examined her and reported that his "findings would support her having cognitive function sufficient to continue her participation in the court's proceedings" (while also noting that "she could have a more detailed neuropsychological evaluation as part of her neurological assessment"). Rothstein Report at 2. Judge Newman argued in her brief that this report should "obviate the need for any further testing" and end these proceedings. July 5 Brief at 2. At oral argument, when pressed about problems with the Committee's relying on the report, Judge Newman's counsel seemed to back away from a request that the Committee rely on it, suggesting that he supplied it only as background. Oral Arg. at 26:15–18 ("What we have submitted from Dr. Rothstein is—mostly was a point of information that the Committee could choose to credit or not credit as it wishes."). As explained below, the Committee finds that no weight can be given to Dr. Rothstein's report on the issue of demanding the medical examinations and records at issue, at least because, on its face, it shows internal inconsistencies on critical points and Judge Newman has refused to provide the Committee the

cognitive test described in the report and the information submitted to Dr. Rothstein and on which he relied.³¹

The most critical aspect of the Rothstein Report is its description of a cognitive test administered to Judge Newman. The Report notes that a “partial MoCA examination” was performed with Judge Newman. Rothstein Report at 2. A MOCA examination refers to the Montreal Cognitive Assessment, which is a one-page test, the current version of which is attached as Exhibit 11 to this Report and

³¹ From the report itself, it appears that Dr. Rothstein was only provided an article written by Judge Newman’s former law clerk, Andrew Michaels, *Judge Newman’s Recent Dissents Show She Is Fit For Service* (June 6, 2023), available at <https://ssrn.com/abstract=4472679> (last visited July 31, 2023) (claiming that he “did not perceive a significant drop in the quality or thoroughness of her opinions over the previous decade”) and a Washington Post article about this case. It is unclear, and counsel refused to tell the Committee what materials, including medical records and materials from this proceeding detailing Judge Newman’s interactions with staff and the deficiencies in her case-handling, were part of what Dr. Rothstein received and considered, even while counsel acknowledged that it is relevant to assessing such an expert’s opinion to know what materials he had before him. Oral. Arg. Tr. at 21:13–22:6 (medical records); 24:25–25:2 (relevance); 29:1–24 (materials from this proceeding). The importance of knowing the bases for an expert’s opinion is recognized in the Federal Rules of Civil Procedure, *see, e.g.*, Rule 26(a)(2) (requiring an expert report specifying “the facts or data considered by the witness”), and in the Rule 702 of the Federal Rules of Evidence as understood in *Daubert* and related cases, which focus on the methodology of reasoning from a sufficient factual foundation.

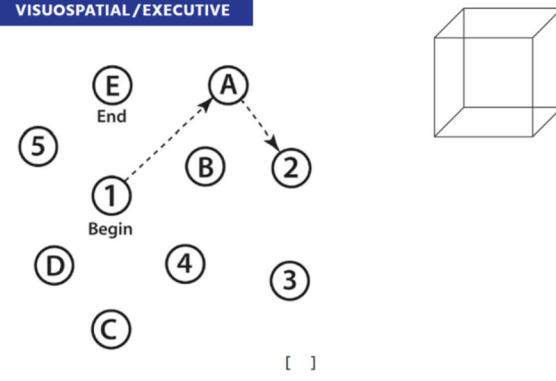
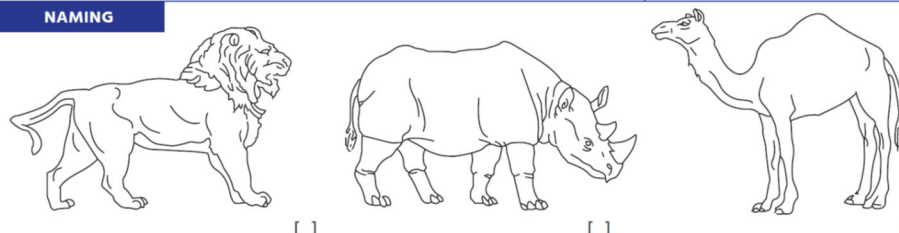
Recommendation and is reproduced below. According to the MOCA website, the test takes about 10 minutes to administer. See MoCA News, *Improving Outcomes in Cancer Patients and the Role of Screening for Cognitive Impairment*, available at <https://mocacognition.com/moca-news/> (last visited July 31, 2023) (“MoCA takes just 10 minutes to administer . . .”). The test has several subparts and typically requires the person administering the test to check boxes and tally up points on each sub-part. The full test is scored out of a total of 30 points and (as noted at the bottom of the test sheet) a score of 26 or higher is considered normal.

MONTREAL COGNITIVE ASSESSMENT (MOCA®)

Version 8.1 English

Name:
Education:
Sex:

Date of birth:
DATE:

VISUOSPATIAL/EXECUTIVE									
 <p style="text-align: center;">[] []</p>	Copy cube	Draw CLOCK (Ten past eleven) (3 points)							___/5
NAMING		 <p style="text-align: center;">[] [] []</p>							___/3
MEMORY	Read list of words, subject must repeat them. Do 2 trials, even if 1st trial is successful. Do a recall after 5 minutes.		FACE	VELVET	CHURCH	DAISY	RED	NO POINTS	
		1 ST TRIAL							
		2 ND TRIAL							
ATTENTION	Read list of digits (1 digit/ sec.).	Subject has to repeat them in the forward order. [] 2 1 8 5 4							___/2
		Subject has to repeat them in the backward order. [] 7 4 2							
Read list of letters. The subject must tap with his hand at each letter A. No points if ≥ 2 errors		[] F B A C M N A A J K L B A F A K D E A A A J A M O F A A B							___/1
Serial 7 subtraction starting at 100.		[] 93	[] 86	[] 79	[] 72	[] 65			___/3
		4 or 5 correct subtractions: 3 pts, 2 or 3 correct: 2 pts, 1 correct: 1 pt, 0 correct: 0							
LANGUAGE	Repeat: I only know that John is the one to help today. []							___/2	
		The cat always hid under the couch when dogs were in the room. []							
Fluency: Name maximum number of words in one minute that begin with the letter F.		[] _____ (N ≥ 11 words)							___/1
ABSTRACTION	Similarity between e.g. banana - orange = fruit [] train - bicycle [] watch - ruler							___/2	
DELAYED RECALL	(MIS)	Has to recall words WITH NO CUE	FACE	VELVET	CHURCH	DAISY	RED	Points for UNCUEDE recall only	
		X3	[]	[]	[]	[]	[]		
Memory Index Score (MIS)		X2	Category cue					MIS = ___/15	
		X1	Multiple choice cue						
ORIENTATION	[] Date	[] Month	[] Year	[] Day	[] Place	[] City			___/6
© Z. Nasreddine MD		www.mocatest.org			MIS: /15				
Administered by: _____					(Normal ≥ 26/30)				
Training and Certification are required to ensure accuracy					Add 1 point if ≤ 12 yr edu		TOTAL		___/30

Dr. Rothstein explained that a “partial” test was given because Judge Newman had a broken wrist and “is unable to write.” Rothstein Report at 1 & 2; Oral Arg. Tr. at 31:3–9 (Judge Newman’s counsel confirmed she was unable to write and was instructed by her orthopedic surgeon not to hold a pen). Dr. Rothstein specified that she “cannot follow trail or draw a cube (each worth one point on the 30-point test),” Rothstein Report at 2—a description that corresponds to the first two parts of the test. *See* Ex. 9. The section testing memory requires the subject to remember five words several minutes after they have been read to the subject and repeated several times. Dr. Rothstein reported that, on that section, Judge Newman “fail[ed] to remember four of five words after several minutes,” thus losing four points. Rothstein Report at 2. He reported her total score as 24/28.

There is a significant internal contradiction on the face of that description, however, because if Judge Newman was unable to write, she also necessarily was unable to complete another section of the test—the section next to drawing the cube—which requires the subject to draw a clock. *See* Ex. 9; *see also* FAQs, *Does the subject receive a point for the contour of the clock if the numbers are organized in a circular manner but the circle is not drawn?*, available at <https://mocacognition.com/faq/> (last visited July 31, 2023) (explaining “a circle must be drawn” for points to be awarded). That section is worth three points. *See* Ex. 9. Thus, if Judge Newman was unable to write, it appears that she necessarily was unable to complete sections of the test worth 5 points, and her test properly should have been scored out of a total of 25 points, not 28 points. In fact, the MOCA website specifically describes (in the FAQs section) how to administer the test to a person who is “unable to complete the written portion” and explains that the test should be scored out of 25. FAQs, *How can I score the test if the subject is unable to complete the*

written portion of the test because of a physical disability such as hemiplegia?, available at <https://mocacognition.com/faq/> (last visited July 31, 2023). Given that Judge Newman missed four of the five points on the memory section of the test, Dr. Rothstein's own description of her performance suggests that her score was actually 21/25, not 24/28.

Beyond that, the MOCA website also describes how a test scored out of 25 can be converted to a score on a scale of thirty. The subject's score should be multiplied by 30 and the result of that operation divided by 25. FAQs, *How can I score the test if the subject is unable to complete the written portion of the test because of a disability such as hemiplegia?*, available at <https://mocacognition.com/faq/> (last visited July 31, 2023). Performing that calculation here on a presumed score of 21/25 would yield a score of 25.2/30, *which is below the lower limit of the normal range*. See Ex. 9 (indicating scores ≥ 26 are normal).

Given the concerns raised by the inconsistency on the face of the Rothstein Report, the Committee ordered Judge Newman to produce the actual MOCA test sheet as administered to her and also to produce all materials that had been provided to Dr. Rothstein to inform his opinion. See July 7 Order at 2. The Committee also instructed counsel to be prepared to describe the scoring of Judge Newman's MOCA test at argument. See *id.* at 2–3. Judge Newman refused to provide any of those materials, and at argument counsel could not shed any light on the scoring of the MOCA test. See Oral Arg. Tr. at 32:9–34:17. Counsel did acknowledge, however, that given the statements in the report about Judge Newman's inability to write, it was possible that the reported score was an error. See *id.* at 34:17.

Given the serious concerns raised by the internal contradiction on the face of the Rothstein Report and Judge Newman's refusal to provide either that test or any of the

materials on which Dr. Rothstein relied, the Committee concludes that it can give no weight to the report on the issue of whether the orders of medical examinations and records was justified and Judge Newman's refusal to comply was misconduct. To be clear, the Committee does not attempt to draw any conclusions from the calculation noted above indicating that Judge Newman's apparent score of 21/25 would fall in the abnormal range on a 30-point scale or that she failed 80% of the memory questions on the test. Instead, the Committee has noted that calculation solely to emphasize why the Committee must see the underlying test and cannot simply accept the Rothstein Report on its face.

The Committee's decision to give no weight to the Rothstein Report is supported by the *Adams* case. There, when Judge Adams attempted to submit testimony from his own psychiatrist but refused to provide the investigating committee "any of the records underlying his psychiatrist's evaluation," the committee refused to accept the testimony. *Adams*, C.C.D. No. 17-01 at 13; *In re Complaint Under the Judicial Conduct and Disability Act*, No. 10-20-90049, at 22 (noting that the special committee excluded the psychiatrist's testimony because Judge Adams "refused to disclose any of the underlying reports, testing materials, or other documents relating to the evaluation"). The Committee takes a similar approach here in deciding that it can give no weight to the Rothstein Report on the issue now before it.

f. Judge Newman's Assertion that the Committee Lacked a Reasonable Basis for Its Orders Is Meritless.

Judge Newman finally argues that the evidence gathered by the Committee is insufficient to provide a reasonable basis for concern about her cognitive state and thus cannot justify the Committee's orders. Her assertions on

this score largely boil down to two points, neither of which is persuasive.

First, Judge Newman points to data from the Clerk's Office cited in the May 16 Order to argue that her average time for issuing opinions actually *improved* in recent years. See July 5 Brief at 14. Thus, Judge Newman points out that in the twelve-month period from October 2020 to September 2021 her average time to issue an opinion was 249 days. But in the 18-month period from October 2021 through March 2023 her average time to issue an opinion dropped to 199 days. See *id.* Judge Newman accurately reports the raw numbers, but they do not remotely support her conclusion that everything is just fine with her speed in issuing opinions. The obvious reason for the improvement after October 2021 is that her caseload was substantially reduced in this period. Indeed, from May 2022 to April 2023, Judge Newman participated in deciding only 65 cases, roughly *half* the load of the average active Federal Circuit judge (129 cases). [REDACTED] Aff. [14] ¶ 22. Judge Newman also does not sit on motions panels. *Id.* ¶ 23. Despite carrying a fraction of the ordinary workload, however, her average time to issue an opinion was 199 days—almost *four times* the average of other active judges (53 days). [REDACTED] Aff. [13] ¶¶ 15, 17; [REDACTED] Aff. [14] ¶ 13.

What the statistics actually show, then, is a failed experiment under which Judge Newman's caseload was radically reduced in an effort to enable her to issue opinions in a timely fashion but—although the reduced workload improved her speed somewhat—her time for issuing opinions remained so far behind the rate of other judges that it continues to interfere with the efficient conduct of the Court's business.

Second, Judge Newman dismisses the concerns raised in the affidavits of multiple staff members as “minutia[e]”

and “petty grievances” that she will barely even deign to address. July 5 Brief at 15. The Committee finds this cavalier response deeply troubling. The concerns that dedicated staff members have brought to the Committee are not minutiae, nor are they petty. They reveal a pattern of serious dysfunction in Judge Newman’s interactions with staff both within and outside her chambers that provide an ample basis for reasonable concerns about Judge Newman’s cognitive state. Details are provided earlier in this report. Moreover, at least one Circuit has held that a judicial employee may bring a Fifth Amendment claim against a court for not providing her relief under the court’s EDR plan. *Strickland v. United States*, 32 F.4th 311, 356 (4th Cir. 2022) (holding “the Fourth Circuit’s EDR Plan afforded [plaintiff] with protected property interests”). In the Committee’s view, the fact that Judge Newman would make such an argument only confirms that there are reasonable grounds to have concerns about her cognitive state.

And to the extent that she argues that the Committee should vacate the ordered of medical examinations, as the Sixth Circuit Judicial Council ultimately did in *Adams*, she is in error. In *Adams*, Judge Adams troubling behavior abated, in fact the four complainant judges testified that he was no longer exhibiting the concerning behavior. See Order & Memorandum, *In re Complaint of Judicial Misconduct*, No. 06-13-90009, at 4 (6th Cir. Judicial Council June 27, 2018). Here, in contrast, Judge Newman has made no argument, let alone any showing, that the bases for concern about cognitive problems, including both her work-processing delays and her troubling interactions, have abated. Despite having three law clerks and a judicial assistant, having no new cases from April through September and not sitting on motions panels, Judge Newman has been unable to issue her seven majority opinions (that as of July 31, 2023 average 230 days old) and has delayed at

least two other majorities with her inability to vote or circulate dissents in time frames required by our rules.³²

Judge Newman’s accusatory interactions with staff about her supposedly stolen computer have continued unabated.³³ She now claims that “decades of my work and my information” were on the computer, and when staff explained (over and over again) that none of her information was on the hard drive of that computer, she accused them of “clever dissembling,” being “shameful,” and engaged in “trickery.” See Ex. 6 at 23. In a single two-day period from July 6 to July 7, more than two dozen emails passed between Judge Newman and the Director of IT, the Help Desk Manager, and the Clerk of Court regarding her

³² In ██████████, the majority opinion was circulated on May █, 2023, and a majority was quickly achieved. Judge Newman circulated her 8-page dissent 74 days after the majority opinion. In another case, the majority opinion was circulated on April █, 2023, ██████████, and a majority was quickly achieved. Judge Newman did not vote until May █ (37 days after the majority opinion) and did not circulate her 4-page dissent until July █, 2023 (95 days after the majority), thus holding up the issuance of this opinion for three months.

³³ The Committee did not rely upon these more recent interactions in concluding that there was a reasonable basis for its orders or concluding that Judge Newman’s failure to cooperate was misconduct or in the choice of recommended sanction. They are mentioned solely in response to the argument by Judge Newman that this case is like *Adams*, where the circumstances underlying an examination order eventually changed enough to warrant the order’s withdrawal—which has not been shown here.

allegations that they stole her computer and files and their attempts to explain to her that her files all reside on her chambers' shared drive, and none of her files were on the judicial assistant's hard drive. *See generally* Ex. 6; *id.* at 4 (Director of IT confirming "[redacted] [Judicial Assistant] has no access to Judge Newman's shared drive nor has any of Judge Newman's data stored locally on his PC."); *id.* at 5 (IT staff member confirming the same). The staff respectfully and patiently explained to Judge Newman that "[e]very chambers stored those items on their network drives which are accessible to every computer in that chambers. The items you describe are located on your network drive." *Id.* at 18; *see also, e.g., id.* at 22 (Clerk of Court explaining to Judge Newman that "I am at a loss for how different a way I can again explain what I have explained to you repeatedly for months. Your files are on your network drive. You have access to everything."); *id.* at 9 (Director of IT again explaining "[w]e have checked, double checked and triple checked and there is no data on any local computer or drive that belongs to you. All of your data is on the Newman share."); *id.* at 12 (Director of IT confirming a third time that "no Newman Chambers files reside [redacted] [Judicial Assistant's] PC. There is nothing to return you as we informed you previously that all Newman Chambers files were moved to the Newman Share . . ."); *see also* [redacted] Aff. [8] ¶ 27 & Ex. C at 2 ("Because all of your chambers materials, drafts, and documents are stored on your chambers network drive and not the local desktop, nothing about the move of this desktop ever hindered, restricted, or interfered with access by either you or your chambers staff to these materials."). And Judge Newman refused the many staff offers to help her locate the files that she has misplaced. *See* [redacted] Aff. [6] ¶¶ 2-6; [redacted] Aff. [5] ¶¶ 2-4; [redacted] Aff. [8] ¶¶ 35-36; Ex. 6 at 15 (Clerk of Court explaining "we have offered repeatedly to assist you with locating any files you cannot

find or access. However, through our many conversations, we have yet to learn of any file or record of your chambers that is actually missing or unavailable.”); *id.* at 26 (“Please let us know what you cannot locate. Our staff is available and willing to assist you.”); ██████████ Aff. [8] at Ex. D (communicating to Judge Newman “notwithstanding how you treated him yesterday, ██████ [the Court’s Help Desk Manager] is more than willing to come back to your chambers and help you find these files”).

These recent exchanges underscore the absence of any basis for deeming the concerns necessitating the Committee’s orders to have abated. Unfortunately, the circumstances here are not like *Adams* where the behavior that gave rise to the ordered medical examinations abated and eliminated the reasonable basis for ordering them.

III. RECOMMENDED SANCTION

Given the seriousness of Judge Newman’s misconduct and the extensive evidence establishing, at a minimum, a reasonable basis for concern that Judge Newman suffers from a disability, the Committee recommends that Judge Newman not be permitted to hear any cases not yet assigned to an authoring judge, at the panel or en banc level, subject to consideration of renewal if the refusal to cooperate found here continues after that time and to consideration of modification or rescission if justified by an end of the refusal or by other changes.

As noted above, *see supra* pp. 8–10, 60–64, Judge Newman’s refusal to cooperate with the Committee is a serious matter. Her action has prevented the Committee from fulfilling its statutorily assigned role. That role, moreover, is essential for the proper functioning of the judiciary. The Act gives the judiciary an important responsibility for regulating itself through investigations such as this. Accordingly, all judges have an obligation to cooperate with

proceedings under the Act to ensure that self-policing by the judiciary can function properly. If the judge who is the subject of a disability proceeding could bring the mechanism Congress established for addressing judicial disability to a grinding halt simply by flouting the rules and refusing to cooperate, the self-policing mechanism Congress created would be a nullity. And that would undermine public confidence in the judiciary itself.

Accordingly, Judge Newman's conduct thwarting the Committee's investigation cannot go unpunished and cannot be met with a minor sanction that a life-tenured judge might ignore. Instead, the Committee believes that the only sanction that would appropriately impress upon Judge Newman the seriousness of this matter is the temporary suspension of all case assignments for a fixed time period, as described above.

This sanction is consistent with the JC&D Committee's decision in *Adams*. There, the JC&D Committee affirmed the finding of the Sixth Circuit Judicial Council that Judge Adams' refusal to undergo a mental health examination by a psychiatrist chosen by the special committee constituted misconduct and explained that, if he continued to "refuse to submit to the mental health examination ordered by the Judicial Council and affirmed by this Committee, sanctions for [his] continued failure to cooperate—including the prohibition of the assignment of new cases on a temporary basis for a time certain—may be warranted." *Adams*, C.C.D. No. 17-01, at 39; *see also* 28 U.S.C. § 354(a)(2).

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

cooperation justifies suspending case assignments for the fixed period of one year or at least until she ceases her misconduct and cooperates such that the Committee can complete its investigation, whichever comes sooner.

This report and recommendation has been unanimously adopted by the Committee.³⁴

³⁴ Accompanying this report is a statement of the vote. *See* Rule 17.

Redacted Supporting Attachments¹

¹ The attachments have been redacted and reordered to protect confidentiality.

United States Court of Appeals for the Federal Circuit

UNDER SEAL (NON-PUBLIC ORDER)

IN RE COMPLAINT NO. 23-90015

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

PER CURIAM.

STATEMENT OF THE VOTE

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

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COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PROCEEDING BEFORE

CHIEF CIRCUIT JUDGE KIMBERLY A. MOORE
CIRCUIT JUDGE SHARON PROST
CIRCUIT JUDGE RICHARD G. TARANTO

DEPOSITION OF [REDACTED]

Wednesday, April 12, 2023
9:00 a.m.

ALSO PRESENT:

[REDACTED], Esq.
[REDACTED], Witness
[REDACTED], Esq.

Reported by: Susanne Bergling, RMR-CRR

██████████
Court of Appeals for the Federal Circuit

4/12/2023

1 P R O C E E D I N G S
2 - - - - -
3 (Proceeding called to order
4 9:06 a.m.)

5 ██████████: I'm ██████████. I
6 represent ██████████ with respect to this
7 proceeding, and I wanted to say that there was
8 improper service of the subpoena. She was not
9 given reasonable notice. She was given notice
10 of less than 48 hours, which is not considered a
11 reasonable period, and she was also served by
12 ██████████, who is an agent of the
13 Court, and the Court is a party to this action,
14 and, therefore, is not a reasonable person to
15 choose to give service.

16 Also, the lack of timeliness imposed an
17 undue burden on my client.

18 CHIEF JUDGE MOORE: Okay.

19 LAW CLERK: ██████████, if you will
20 remain seated and raise your right hand, please.
21 Whereupon --

22 ██████████
23 a witness, called for examination, having
24 previously been duly sworn, was examined and
25 testified further as follows:

██████████
Court of Appeals for the Federal Circuit

4/12/2023

1 A. I do.

2 Q. How long have you been working with
3 Judge Newman?

4 A. Three years and a few months.

5 Q. We understand that you are her ██████████
6 clerk. Can you tell us about that role and what
7 your responsibilities are?

8 A. I am going to invoke my right under the
9 Fifth Amendment to avoid self-incrimination.

10 Q. You can't tell us what your
11 responsibilities are in your job?

12 A. I am --

13 ██████████: I am going to say asked
14 and answered. Objection.

15 ██████████: How does this have
16 anything to do with a criminal --

17 ██████████: This is not a criminal
18 case. It's a civil case.

19 ██████████: Exactly.

20 ██████████: You can invoke the
21 Fifth Amendment in a civil case.

22 ██████████: If there is some basis
23 for thinking they may be a crime involved --

24 ██████████: That's not the --
25 actually not the law.

██████████
Court of Appeals for the Federal Circuit

4/12/2023

1 CHIEF JUDGE MOORE: You are refusing to
2 tell us what your responsibilities are for Judge
3 Newman?

4 THE WITNESS: I am invoking my
5 privilege under the Fifth Amendment to avoid
6 self-incrimination.

7 JUDGE PROST: Are you aware whether or
8 not there any's document in Personnel or in
9 chambers that would describe the duties of your
10 position?

11 ██████████: Objection. There's too
12 many people questioning the witness. There's
13 only one person who's allowed to question the
14 witness at one time.

15 CHIEF JUDGE MOORE: With all due
16 respect, that's not correct. Under our rules,
17 that's not correct. This is not a formal court
18 proceeding. This is a special investigation.
19 The committee is required to be three people,
20 and we are required to all participate. So you
21 are incorrect under the rules of the proceeding.

22 ██████████: All right. Well, can
23 we have one person questioning her at one time,
24 because you're asking and answering the same
25 question repeatedly.

██████████
Court of Appeals for the Federal Circuit

4/12/2023

1 CHIEF JUDGE MOORE: No. You can lodge
2 your objection if you wish, but we are going to
3 proceed, because this is an interview by a
4 special committee under a judicial proceeding.

5 ██████████: All right. I object to
6 too many people questioning the witness, and
7 asked and answered.

8 JUDGE PROST: Maybe I was
9 misinterpreted. My question was not the same as
10 the one previously asked. I simply asked if
11 there was documentation she's aware of in our
12 Office of Personnel or in her chambers that
13 describes the duties of a law clerk in her
14 position.

15 THE WITNESS: I don't know.

16 CHIEF JUDGE MOORE: Do you manage or
17 otherwise review the work of other clerks in
18 chambers?

19 THE WITNESS: I, on advice of counsel,
20 am invoking my Fifth Amendment privilege to
21 avoid self-incrimination.

22 CHIEF JUDGE MOORE: How often do you
23 come into the building?

24 THE WITNESS: On advice of counsel, I
25 am invoking my Fifth Amendment privilege.

██████████
Court of Appeals for the Federal Circuit

4/12/2023

1 CHIEF JUDGE MOORE: Do you ever
2 communicate with Judge Newman?

3 THE WITNESS: By advice of counsel, I
4 am invoking my Fifth Amendment privilege against
5 self-incrimination.

6 CHIEF JUDGE MOORE: How could you
7 incriminate yourself if -- by answering a
8 question of whether you communicate with the
9 person that you work for?

10 ██████████: Objection.
11 Argumentative. You can answer.

12 THE WITNESS: I am going to invoke my
13 right under the Fifth Amendment to avoid
14 self-incrimination.

15 CHIEF JUDGE MOORE: How could you
16 incriminate yourself by answering a question
17 about whether you communicate with the person
18 that you report to?

19 THE WITNESS: I am going to invoke my
20 right against self-incrimination under the Fifth
21 Amendment.

22 CHIEF JUDGE MOORE: How often do you
23 see Judge Newman in person?

24 THE WITNESS: I am going to invoke my
25 Fifth Amendment right.

██████████
Court of Appeals for the Federal Circuit

4/12/2023

1 CHIEF JUDGE MOORE: Do you ever meet
2 with her by Zoom?

3 THE WITNESS: I am going to invoke my
4 Fifth Amendment right.

5 CHIEF JUDGE MOORE: Do you ever talk to
6 her on the phone?

7 THE WITNESS: I am going to invoke my
8 Fifth Amendment.

9 CHIEF JUDGE MOORE: How are cases
10 assigned in your chambers?

11 THE WITNESS: I am going to invoke my
12 Fifth Amendment right on that.

13 CHIEF JUDGE MOORE: How many bench
14 memos would you estimate that you have drafted
15 for Judge Newman in the last year?

16 THE WITNESS: I am going to invoke my
17 Fifth Amendment.

18 CHIEF JUDGE MOORE: Do you draft
19 opinions for her?

20 THE WITNESS: I am going to invoke my
21 Fifth Amendment.

22 CHIEF JUDGE MOORE: Does Judge Newman
23 discuss cases you?

24 THE WITNESS: I am not going to answer
25 that.

██████████
Court of Appeals for the Federal Circuit

4/12/2023

1 ██████████: Let her finish the
2 question. Let her finish.

3 CHIEF JUDGE MOORE: Does Judge Newman
4 discuss cases with you in advance of oral
5 argument?

6 THE WITNESS: I am going to invoke my
7 Fifth Amendment.

8 CHIEF JUDGE MOORE: Are you aware of
9 any instances in which Judge Newman has offered
10 an opinion with a disposition contrary to what
11 was voted on by judges?

12 THE COURT: I am going to invoke my
13 Fifth Amendment.

14 CHIEF JUDGE MOORE: Are you aware of
15 any instances in which Judge Newman has changed
16 her mind about the appropriate disposition of a
17 case that you have been working on?

18 THE WITNESS: I am going to invoke my
19 Fifth Amendment.

20 CHIEF JUDGE MOORE: Judge Newman has
21 seven current cases assigned to her. I am going
22 to walk through each one and ask you if you're
23 working on that case.

24 One of the cases is ██████████
██████████. Are you currently working on that case?

██████████
Court of Appeals for the Federal Circuit

4/12/2023

1 THE WITNESS: Fifth Amendment.

2 ██████████: Say the whole sentence,
3 please.

4 THE WITNESS: On advice of counsel, I
5 invoke my Fifth Amendment right against
6 self-incrimination.

7 CHIEF JUDGE MOORE: Judge Newman has a
8 case ██████████. Are you
9 working on that case?

10 THE WITNESS: On advice of counsel, I'm
11 invoking my Fifth Amendment right against
12 self-incrimination.

13 CHIEF JUDGE MOORE: ██████████
14 ██████████, a second case --
15 not the same one -- are you working on that one?

16 THE WITNESS: On advice of counsel, I
17 am invoking my Fifth Amendment right against
18 self-incrimination.

19 CHIEF JUDGE MOORE: ██████████
20 ██████████, are you working on that case?

21 THE WITNESS: On advice of counsel, I
22 am invoking my Fifth Amendment right against
23 self-incrimination.

24 CHIEF JUDGE MOORE: Counsel, could you
25 explain why you're advising your client to

1 refuse to answer the simplest of questions about
2 her job?

3 ██████████: That's privileged. My
4 communications with my client is privileged.

5 BY CHIEF JUDGE MOORE: Do you
6 understand, ██████████ that this is a
7 proceeding that is involving our investigation
8 into issues related to Judge Newman, and it
9 isn't an investigation into anything related to
10 you?

11 THE WITNESS: I'm invoking my right
12 against self-incrimination under the Fifth
13 Amendment.

14 CHIEF JUDGE MOORE: Do you understand
15 that refusing to cooperate with this proceeding
16 could result in a misconduct charge because
17 you're obligated as a judicial employee to
18 participate?

19 ██████████: Objection. She is
20 participating.

21 You can answer.

22 THE WITNESS: Yes.

23 CHIEF JUDGE MOORE: Do you understand
24 that the rules to this proceeding suggest that
25 any employee who fails to participate could be

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1 terminated for misconduct?

2 ██████████: Objection.

3 Argumentative and threatening.

4 You can answer.

5 THE WITNESS: No.

6 CHIEF JUDGE MOORE: Is it your intent
7 to answer every question that I ask you by
8 invoking the Fifth Amendment?

9 THE WITNESS: No.

10 CHIEF JUDGE MOORE: Okay, then I'll
11 continue.

12 ██████████, are you
13 working on that case with Judge Newman's
14 chambers?

15 THE WITNESS: On advice of counsel, I'm
16 invoking my right under the Fifth Amendment to
17 avoid self-incrimination.

18 CHIEF JUDGE MOORE: ██████████
19 ██████████. Are you working on that?

20 THE WITNESS: On advice of counsel, I
21 am invoking my Fifth Amendment right to avoid
22 self-incrimination.

23 CHIEF JUDGE MOORE: ██████████, how
24 could you incriminate yourself by simply
25 acknowledging whether you are working on any

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1 certain cases?

2 THE WITNESS: On advice of counsel, I
3 am going to invoke my Fifth Amendment right
4 against self-incrimination.

5 CHIEF JUDGE MOORE: ██████████
██████████. Are you working
7 on that case?

8 THE WITNESS: I am invoking my right
9 against self-incrimination under the Fifth
10 Amendment.

11 CHIEF JUDGE MOORE: ██████████
██████████. Are you working on
13 that case?

14 THE WITNESS: I am invoking my right
15 against self-incrimination under the Fifth
16 Amendment.

17 CHIEF JUDGE MOORE: ██████████
██████████. Are you working on that case?

19 THE WITNESS: On advice of counsel, I
20 am invoking my Fifth Amendment privilege against
21 self-incrimination.

22 CHIEF JUDGE MOORE: Do you ever send
23 Judge Newman drafts of opinions?

24 THE WITNESS: On advice of counsel, I
25 am invoking my right against self-incrimination

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1 under the Fifth Amendment.

2 CHIEF JUDGE MOORE: On average, how
3 many drafts of an opinion does Judge Newman
4 receive before the opinion gets circulated to
5 the panel?

6 THE WITNESS: On advice of counsel, I
7 am invoking my Fifth Amendment right against
8 self-incrimination.

9 CHIEF JUDGE MOORE: How could you
10 possibly incriminate yourself by revealing how
11 many drafts of opinions are created?

12 ██████████: Objection.
13 Argumentative. You can answer.

14 THE WITNESS: On advice of counsel, I'm
15 invoking my right against self-incrimination
16 under the Fifth Amendment.

17 CHIEF JUDGE MOORE: She didn't advise
18 you to say that it was the Fifth Amendment and
19 that you shouldn't answer. She actually said
20 you could answer.

21 ██████████: She can answer however
22 she wants.

23 CHIEF JUDGE MOORE: But she started by
24 saying that, on advice of counsel, she was doing
25 it, but you didn't actually give her that

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1 advice. So is it your decision, then, that it's
2 a Fifth Amendment privilege that you would
3 incriminate yourself if you answered the
4 question?

5 ██████████: Objection.
6 Argumentative.

7 THE WITNESS: Yes.

8 CHIEF JUDGE MOORE: Does Judge Newman
9 have any physical health issues that you're
10 aware of?

11 THE WITNESS: On advice of counsel, I
12 am invoking my right under the Fifth Amendment
13 for self-incrimination.

14 CHIEF JUDGE MOORE: How could you
15 incriminate yourself under the Fifth Amendment
16 by telling us whether the Judge has any health
17 issues?

18 THE WITNESS: On advice of counsel, I
19 am invoking my Fifth Amendment right against
20 self-incrimination.

21 JUDGE PROST: Can I interrupt and ask,
22 I think you had said earlier that there might be
23 a line of questioning in which you would not
24 invoke the Fifth Amendment with respect to your
25 duties, or did I misunderstand?

1 THE WITNESS: You did not
2 misunderstand.

3 JUDGE PROST: So there are certain
4 things that you would be prepared to discuss in
5 response to questions, so could you give us some
6 indication about where that line is drawn to
7 save us all a lot of time?

8 THE WITNESS: Until you ask a question,
9 I can't answer that.

10 CHIEF JUDGE MOORE: Why don't we take a
11 five-minute break.

12 ██████████: And can I get your
13 card?

14 CHIEF JUDGE MOORE: I don't have a
15 card.

16 ██████████: Can I get name?

17 CHIEF JUDGE MOORE: Chief Judge Moore.

18 ██████████: Okay.

19 (A brief recess was taken.)

20 CHIEF JUDGE MOORE: Can we go back on
21 the record?

22 ██████████: Before we continue, I
23 just want to know who you are at the end of the
24 table. That's the one person that my client
25 doesn't know who you are.

1 [REDACTED]: [REDACTED], general
2 counsel.

3 [REDACTED]: Okay.

4 JUDGE PROST: Let me just, in order to
5 expedite this for all of us, I guess I am going
6 to probe further, and you'll say what you say,
7 but I guess we are in need -- or I feel I'm in
8 need of some guidance in terms of getting you to
9 respond to questions we have.

10 So I guess are there -- I would like to
11 ask if there are any conditions, preconditions,
12 that would provide you comfort or a basis for
13 answering -- we've already had a number of
14 questions, you know, the type of questions
15 related to your job responsibilities and your
16 work. Are there any conditions that we could
17 provide that would permit you to respond?

18 THE WITNESS: I don't understand the
19 question. Can you rephrase that?

20 JUDGE PROST: I guess I don't know how
21 to restate it other than conditions,
22 preconditions. I mean, just off the top of my
23 head, this isn't apt necessarily, but just
24 immunity, I mean, is that the kind of thing that
25 you are -- would satisfy you? That's just

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1 really off the top of my head.

2 THE WITNESS: No, no.

3 JUDGE PROST: So there are no
4 conditions that you can think of, such as
5 immunity, that would allow you to answer the
6 questions?

7 THE WITNESS: For the questions already
8 asked, no.

9 JUDGE PROST: The type -- yeah, the --
10 okay.

11 And then I guess -- and this follows up
12 to my question earlier about can you give us
13 some guidance in order to expedite this in terms
14 of you -- I think you noted that there might be
15 questions you would be willing to answer.

16 THE WITNESS: Yes.

17 JUDGE PROST: If you could give us any
18 guidance, would that be -- for example, we think
19 we have already asked questions related to your
20 job duties and responsibilities. Are there
21 questions in that realm that you'd be willing to
22 answer or is that category off the table?

23 THE WITNESS: That category is off the
24 table.

25 JUDGE PROST: I'm trying to think

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1 generally what I --

2 ██████████: Can you tell us what
3 categories are on the table?

4 THE WITNESS: I am not going to give
5 you questions to ask.

6 ██████████: We're asking for topics
7 of questions.

8 THE WITNESS: I understand. I can't
9 give you topics either. I don't know what you
10 want to know. I've been given absolutely no
11 information what this is about. So I can't
12 anticipate what you might ask.

13 JUDGE PROST: And are you willing to
14 provide a further basis or information as to
15 your invocation of the privilege just so that
16 maybe there's some way to make you more
17 comfortable -- yes, ma'am?

18 ██████████: And objection to that,
19 just because anything related to what we said is
20 privileged and confidential. So anything
21 relating to her advice of counsel, I would tell
22 her not to answer that question.

23 JUDGE TARANTO: If we are in the
24 position of having to decide whether you're
25 violating a duty of cooperation, we would want

1 to know whatever you could tell us about the
2 basis for invoking a privilege against
3 self-incrimination. Is there anything you can
4 tell us to --

5 THE WITNESS: Not at this time, do I
6 feel comfortable divulging what we've discussed
7 during --

8 JUDGE TARANTO: I didn't ask you about
9 what you discussed. I asked about what basis
10 might there be to help us think about the
11 question of duty of cooperation.

12 THE WITNESS: On advice of counsel, I
13 am not going to answer the question under the
14 Fifth Amendment right against self-
15 incrimination.

16 JUDGE TARANTO: And does the category
17 exclusion that you mentioned in reference to
18 work in chambers also apply more generally to
19 your dealings with Judge Newman?

20 ██████████: Objection. Confusing
21 question. I didn't understand.

22 JUDGE TARANTO: You answered the
23 question from Judge Prost that the category of
24 your work in chambers was -- I think your
25 language was "off the table." Does the same

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1 apply to a category of questions about your
2 dealings with Judge Newman?

3 A. Yes.

4 Q. Okay.

5 ██████████: Can you explain to us --
6 I'm asking the attorney -- when the Fifth
7 Amendment can be invoked?

8 ██████████: The Fifth Amendment can
9 be invoked in a civil case by a nonparty.

10 ██████████: I'm not asking what
11 proceeding types it can be invoked in, but the
12 basis on which it can be invoked.

13 ██████████: It can be invoked when
14 the nonparty has a risk of self-incrimination.

15 ██████████: A risk of self-
16 incrimination in a criminal proceeding
17 or evidence used against them. Is that correct?

18 ██████████: Evidence that can be
19 used against them.

20 ██████████: And can you try to
21 explain, on whatever basis you can, what
22 reasonable basis would come up here?

23 ██████████: I cannot at this time.

24 ██████████: Because it's difficult
25 for us to understand why some of the questions

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1 about -- any of the questions being answered
2 have anything to do with --

3 ██████████: Anything I would
4 respond to that would relate to my attorney-
5 client privilege, of advice that I have given to
6 my client.

7 CHIEF JUDGE MOORE: ██████████, before
8 today, were you aware of a potential judicial
9 disability proceeding involving Judge Newman?

10 THE WITNESS: Yes.

11 CHIEF JUDGE MOORE: How did you become
12 aware of it?

13 THE WITNESS: On advice of counsel, I
14 am going to invoke my Fifth Amendment right
15 against self-incrimination.

16 ██████████: Why did you answer the
17 first question and not this one?

18 THE WITNESS: On advice of counsel, I
19 am going to invoke my Fifth Amendment right
20 against self-incrimination.

21 CHIEF JUDGE MOORE: Have you read any
22 documents given to Judge Newman in this case?

23 THE WITNESS: On advice of counsel, I
24 am going to invoke the Fifth Amendment right
25 against self-incrimination.

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1 CHIEF JUDGE MOORE: Do you understand
2 that this judicial disability proceeding is
3 required to be confidential?

4 THE WITNESS: Yes.

5 CHIEF JUDGE MOORE: Do you understand
6 that if you were to share information about it
7 with others, that that would be a breach of the
8 rules for this proceeding?

9 THE WITNESS: Yes.

10 CHIEF JUDGE MOORE: If I tell you right
11 now that we will grant you immunity and not
12 prosecute you, not find it to constitute an act
13 of misconduct, whatever you tell us you have
14 shared or have not shared, would you be willing
15 to answer questions then?

16 THE WITNESS: No.

17 CHIEF JUDGE MOORE: Why?

18 THE WITNESS: On advice of counsel, I
19 am going to invoke my Fifth Amendment right
20 against self-incrimination.

21 CHIEF JUDGE MOORE: There is no law
22 that prevents you from sharing this information.
23 It is just rules of our Court that says you
24 can't share confidential information. So if
25 we're willing to grant you immunity, guarantee

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1 that you will not be found guilty of misconduct
2 for any acts of sharing that you may have
3 participated in, why can't you answer these
4 questions?

5 ██████████: Objection. That goes
6 to attorney-client privilege, but you can answer
7 the -- it goes to privilege, but you can answer.

8 THE WITNESS: On advice of counsel, I
9 am going to invoke my Fifth Amendment right
10 against self-incrimination.

11 CHIEF JUDGE MOORE: Have you spoken to
12 others about this proceeding?

13 THE WITNESS: On advice of counsel, I
14 am going to invoke my Fifth Amendment right
15 against self-incrimination.

16 ██████████: Can you explain the
17 basis for your right against invoking the
18 privilege?

19 THE WITNESS: By advice of counsel, I
20 am going to invoke my Fifth Amendment --

21 ██████████: Or can counsel explain
22 the reason?

23 ██████████: Not at this time, no.

24 ██████████: So there is no stated
25 basis for invoking the privilege?

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1 ██████████: There is a basis.
2 There is a basis, but the basis is what I've
3 discussed with my client, so it's privileged and
4 confidential, and I can't discuss it with you.

5 CHIEF JUDGE MOORE: But, Counsel, you
6 are giving her advice not to answer questions in
7 an investigation about a judge. It doesn't have
8 anything to do with her.

9 So can you explain to us why you're
10 advising her not to answer these questions?

11 ██████████: Not at this time.

12 JUDGE PROST: When you say "not at this
13 time," does that suggest that if you had more
14 time, if you need more time, that you don't want
15 to do it in this setting -- in other words, you
16 would provide it to us in writing at some other
17 time -- when you say not at this time, I just
18 want clarification, not at this --

19 ██████████: Not in this setting,
20 not given what -- she had exactly one day to
21 prepare for this interview with you guys, and,
22 therefore, she hasn't had time to prepare her
23 answers, and right now she needs to have the
24 time to -- to have her interview in a timely
25 manner, which she was not allowed to do.

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1 CHIEF JUDGE MOORE: Oh, so, please,
2 help me understand. So if we gave you a week,
3 would you be prepared to come back and answer
4 the questions at that time, because if you just
5 need time, we are certainly willing to give you
6 time.

7 ██████████: Nope. She would still
8 not answer the questions.

9 CHIEF JUDGE MOORE: But your stated
10 reason was that she didn't have time to prepare.

11 ██████████: Right, which she didn't
12 have time to prepare.

13 CHIEF JUDGE MOORE: But we are happy to
14 give you that time.

15 THE WITNESS: But even with that time,
16 she should still invoke the privilege.

17 ██████████: On what basis?

18 ██████████: Again, I can't tell you
19 the basis because it's attorney-client
20 privilege.

21 CHIEF JUDGE MOORE: Do you understand
22 that if you talk about this proceeding with
23 others going forward, it would be an act of
24 misconduct?

25 THE WITNESS: No.

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1 CHIEF JUDGE MOORE: You don't
2 understand that this proceeding is required to
3 be kept confidential?

4 THE WITNESS: Yes.

5 CHIEF JUDGE MOORE: You do understand
6 that it's required to be confidential?

7 THE WITNESS: Yes.

8 CHIEF JUDGE MOORE: And do you
9 understand that the requirement it be
10 confidential bars you from discussing it with
11 other people?

12 THE WITNESS: Yes.

13 CHIEF JUDGE MOORE: So you understand
14 that you can't discuss this proceeding with
15 other people.

16 THE WITNESS: Yes.

17 CHIEF JUDGE MOORE: Do you understand
18 that if you do discuss it with other people,
19 that would be an act of misconduct?

20 ██████████: Do you understand that
21 that would be viewed by the committee as an act
22 of misconduct?

23 THE WITNESS: Are you telling me that
24 or are you asking me a question?

25 CHIEF JUDGE MOORE: Do you understand

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1 that it would be an act of misconduct to violate
2 the confidentiality?

3 THE WITNESS: I don't understand that.
4 I'm asking you -- if you're telling me that, I
5 will take -- I understand your words. I have no
6 knowledge of whether that would be considered an
7 act of misconduct or not.

8 CHIEF JUDGE MOORE: The rules regarding
9 this proceeding require that every judicial
10 employee maintain all aspects of it in
11 confidentiality. Did you know that?

12 THE WITNESS: I know that the statute
13 requires that it is a confidential proceeding.
14 That is all that I know.

15 CHIEF JUDGE MOORE: Are you familiar
16 with the rules regarding this proceeding?

17 THE WITNESS: No.

18 CHIEF JUDGE MOORE: Counsel, if you are
19 going to represent your client, I would suggest
20 that you get a copy of these rules, because,
21 ██████████, anyone that you share even the fact
22 of this proceeding with is a breach of the
23 rules.

24 So going forward, it would be
25 considered an act of misconduct if you speak

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1 with people, any people, about this proceeding.

2 Do you now understand what I'm telling you?

3 THE WITNESS: I understand your words,
4 yes.

5 CHIEF JUDGE MOORE: Will you agree not
6 to speak to anyone about these proceedings?

7 THE WITNESS: On advice of counsel, I
8 am going to invoke my Fifth Amendment right to
9 avoid self-incrimination.

10 CHIEF JUDGE MOORE: Does that mean you
11 are not --

12 THE WITNESS: Can we take a break,
13 please?

14 CHIEF JUDGE MOORE: Sure.

15 (A brief recess was taken.)

16 ██████████: If you could ask your
17 last question.

18 CHIEF JUDGE MOORE: Will you agree not
19 to speak to anyone about these proceedings?

20 THE WITNESS: Yes.

21 JUDGE TARANTO: I want to ask one -- at
22 least one followup question on this categories
23 of subject matter, and I think you've identified
24 two that you are -- that you view as off the
25 table for present purposes. One had been work

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1 in chambers. I think I asked you a question, to
2 which you gave the same answer, off the table,
3 about dealings with Judge Newman.

4 I'm going to ask the same question
5 about your perceptions of Judge Newman and her
6 ability to carry out her job.

7 THE WITNESS: On advice of counsel, I
8 am going to invoke the Fifth Amendment against
9 self-incrimination.

10 JUDGE TARANTO: For that category as
11 well?

12 THE WITNESS: Yes.

13 CHIEF JUDGE MOORE: Just to make sure
14 that we have a clear record for future purposes,
15 when you agreed that you will not speak to
16 anyone about these proceedings, that includes
17 people in chambers, people outside of the Court.
18 Do you understand that?

19 THE WITNESS: Yes.

20 CHIEF JUDGE MOORE: That includes the
21 fact of a disability proceeding as well as this
22 interview. Do you agree with that?

23 THE WITNESS: Yes.

24 CHIEF JUDGE MOORE: So you will not
25 disclose with anyone or discuss with anyone this

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1 interview, correct?

2 THE WITNESS: Yes.

3 CHIEF JUDGE MOORE: Has Judge Newman
4 instructed you in any way about how to testify
5 today?

6 THE WITNESS: On advice of counsel, I
7 would like to invoke my Fifth Amendment right
8 against self-incrimination.

9 CHIEF JUDGE MOORE: Has Judge Newman
10 asked you or encouraged you to talk about these
11 proceedings with other people?

12 THE WITNESS: On advice of counsel, I
13 am going to invoke my Fifth Amendment right
14 against self-incrimination.

15 CHIEF JUDGE MOORE: Do you understand
16 that under the law, when you invoke a Fifth
17 Amendment right to invoke self-incrimination,
18 that that allows a body to draw adverse
19 inferences against you with regard to every
20 question that you invoke the privilege?

21 THE WITNESS: Yes.

22 CHIEF JUDGE MOORE: Have you ever
23 stolen money from the Court?

24 ██████████: Objection.

25 Argumentative. You can answer.

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1 THE WITNESS: No.

2 CHIEF JUDGE MOORE: Do you ever perform
3 any legal work related to any case here at the
4 Court?

5 THE WITNESS: I don't understand your
6 question.

7 CHIEF JUDGE MOORE: Do you ever work on
8 any case here at the Court?

9 THE WITNESS: Yes.

10 CHIEF JUDGE MOORE: Do you work on any
11 currently pending cases here at the Court?

12 THE WITNESS: On advice of counsel, I
13 am going to invoke my Fifth Amendment right
14 against self-incrimination.

15 CHIEF JUDGE MOORE: If you aren't
16 working on any pending cases in front of the
17 Court, what are you doing?

18 THE WITNESS: On advice of counsel, I
19 am going to invoke my Fifth Amendment right
20 against self-incrimination.

21 ██████████: Have you ever discussed
22 as a matter with anybody else, outside the
23 Court, the judicial proceedings, judicial
24 disability proceedings?

25 THE WITNESS: On advice of counsel, I

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1 am going to invoke my Fifth Amendment right
2 against self-incrimination.

3 CHIEF JUDGE MOORE: Have you discussed
4 the judicial proceedings in this matter with
5 people outside the Court at Judge Newman's
6 direction?

7 THE WITNESS: On advice of counsel, I
8 am going to invoke my Fifth Amendment right
9 against self-incrimination.

10 JUDGE TARANTO: And just circling back
11 for a little clarification for my understanding,
12 you initially expressed concern about the short
13 time frame you had to prepare for this, and then
14 what I understood that Chief Judge Moore asked,
15 if we gave you additional time that you
16 considered reasonable, if that would change your
17 responses you had to the questions that have
18 arisen today, and I think your answer was no,
19 but I just want to confirm that.

20 THE WITNESS: It would not.

21 JUDGE TARANTO: It would not change.
22 So it's nothing that -- no matter how much time
23 you had, this would remain the same.

24 THE WITNESS: Yes.

25 CHIEF JUDGE MOORE: Can you give us

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1 some indication of why you believe that any of
2 these questions could cause you to incriminate
3 yourself?

4 ██████████: Objection. Calls for
5 privileged communication.

6 CHIEF JUDGE MOORE: No. I'm asking her
7 for her belief, not anything about any
8 communication.

9 THE WITNESS: On advice of counsel, I
10 am going to invoke my Fifth Amendment right
11 against self-incrimination.

12 CHIEF JUDGE MOORE: Can you give us the
13 names of your co-clerks in chambers?

14 THE WITNESS: ██████████
██████████

16 CHIEF JUDGE MOORE: And how long have
17 you worked with each of them?

18 THE WITNESS: ██████████ is, I believe,
19 two and a half years, roughly. ██████████ is
20 six months. ██████████ is three, four
21 months.

22 CHIEF JUDGE MOORE: Can you remember an
23 instance where I came down to chambers and spoke
24 to all of you?

25 THE WITNESS: Yes.

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1 CHIEF JUDGE MOORE: Do you remember
2 that that instance involved Judge Newman
3 disclosing confidential or sensitive ██████████
4 information ██████████?

5 THE WITNESS: On advice of counsel, I
6 am going to invoke my Fifth Amendment right
7 against self-incrimination.

8 CHIEF JUDGE MOORE: Did Judge Newman
9 disclose confidential or sensitive ██████████
10 information ██████████?

11 THE WITNESS: On advice of counsel, I
12 am going to invoke my Fifth Amendment right
13 against self-incrimination.

14 CHIEF JUDGE MOORE: After or at that
15 meeting, I asked you to agree that you would not
16 discuss that sensitive confidential information
17 further. Do you remember that?

18 THE WITNESS: I do.

19 CHIEF JUDGE MOORE: Did you agree?

20 THE WITNESS: Yes.

21 CHIEF JUDGE MOORE: Have you discussed
22 it since then?

23 THE WITNESS: No.

24 CHIEF JUDGE MOORE: Do you ever work
25 with ██████████?

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1 THE WITNESS: I do.

2 CHIEF JUDGE MOORE: Can you tell me
3 what his role in chambers is?

4 THE WITNESS: On advice of counsel, I
5 am going to invoke my Fifth Amendment right
6 against self-incrimination.

7 ██████████: Can you explain a basis
8 for invoking the privilege?

9 ██████████: Again, the privilege is
10 invoked because of the communications I had with
11 my client, so I'm not willing to discuss it.

12 CHIEF JUDGE MOORE: Will you provide us
13 with a basis for believing that these kinds of
14 questions could cause you to incriminate
15 yourself?

16 THE WITNESS: Not at this time.

17 CHIEF JUDGE MOORE: And, Counsel, do I
18 understand that you will also not provide us
19 with any basis for how any of these questions
20 could incriminate her?

21 ██████████: Not at this time.

22 ██████████: Is there a time that
23 would be appropriate or acceptable to you or
24 that you could do it?

25 ██████████: I'm not sure. I don't

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1 know.

2 ██████████: Can you do it in a week?

3 ██████████: No. I don't know. I'm
4 not sure.

5 ██████████: If you were to do it,
6 will you provide a written response?

7 ██████████: It depends on who you
8 order to do what.

9 ██████████: The basis for invoking
10 the privilege to these questions.

11 ██████████: At the moment,
12 everything related to why my client is invoking
13 the privilege is privileged and confidential,
14 and I cannot tell you why we're invoking the
15 privilege without violating attorney-client
16 privilege.

17 CHIEF JUDGE MOORE: ██████████, do you
18 understand that we could grant you immunity from
19 any sort of misconduct proceeding in this
20 context?

21 THE WITNESS: No.

22 CHIEF JUDGE MOORE: If we did grant you
23 immunity from any sort of misconduct proceeding,
24 would you be willing to answer all of the
25 questions that we've asked today?

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1 THE WITNESS: No.

2 CHIEF JUDGE MOORE: Are there any of
3 the questions we've asked today that you would
4 be willing to answer?

5 THE WITNESS: I would continue to
6 invoke my Fifth Amendment right for the
7 questions for which I've already invoked my
8 Fifth Amendment right.

9 JUDGE TARANTO: If immunity included
10 criminal immunity from the United States
11 Attorney, what would your answer be to that
12 question?

13 THE WITNESS: No.

14 ██████████: When you say "no," you
15 mean you still won't answer the questions?

16 THE WITNESS: I will not answer those
17 questions.

18 ██████████: So my understanding is
19 under no circumstances will you answer
20 questions. Is that fair to say?

21 THE WITNESS: For those questions that
22 I've already invoked, I will continue to invoke.

23 ██████████: Okay, thank you.

24 JUDGE TARANTO: And let me just, I
25 guess, add any state-level criminal immunity,

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1 too, if that also was provided, would you answer
2 the questions?

3 THE WITNESS: I don't understand your
4 question. Could you rephrase it?

5 JUDGE TARANTO: Sure.
6 Self-incrimination is a concern about criminal
7 prosecution. If the sovereign United States
8 provided you immunity from criminal prosecution
9 and a sovereign of any relevant state or --
10 let's add in the District of Columbia -- did the
11 same, would you still invoke your Fifth
12 Amendment privilege?

13 THE WITNESS: Yes.

14 CHIEF JUDGE MOORE: Are there any
15 circumstances that would permit you to answer
16 the questions and not invoke your Fifth
17 Amendment privilege as to the questions already
18 asked?

19 THE WITNESS: I can't speculate.

20 CHIEF JUDGE MOORE: I'm not asking you
21 to speculate. I'm saying what could we do to
22 make this a cooperative proceeding. That's all
23 I'm seeking.

24 THE WITNESS: I am cooperating. I'm
25 here.

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1 ██████████: Well, you're not
2 answering --

3 THE WITNESS: I'm answering those
4 questions that I can answer.

5 CHIEF JUDGE MOORE: But we asked some
6 very basic questions about your duties in
7 chambers or whether you've drafted opinions or
8 whether you've written a bench memo, and these
9 are typically jobs that all law clerks do, and
10 you've refused to answer any of those questions.

11 So I'm confused, why?

12 ██████████: And I'm just going to
13 say again that this goes to her privileged
14 communications with me, and she cannot answer
15 related to anything that we have discussed, but
16 you can answer her question.

17 THE WITNESS: There was no question.

18 CHIEF JUDGE MOORE: Actually, it was,
19 why? Why are you refusing to answer any
20 questions about your job duties in chambers?

21 THE WITNESS: On advice of counsel, I
22 am going to invoke my Fifth Amendment right
23 against self-incrimination.

24 JUDGE PROST: Is there a telework
25 policy in your chambers?

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1 THE WITNESS: On advice of counsel, I
2 am going to invoke my Fifth Amendment right
3 against self-incrimination.

4 CHIEF JUDGE MOORE: How many hours a
5 week do you work?

6 THE WITNESS: Forty to 100.

7 CHIEF JUDGE MOORE: And is that 40 to
8 100 for work you do for judicial matters here at
9 the Court?

10 THE WITNESS: Yes.

11 JUDGE PROST: And is that work
12 typically performed in person, in chambers, or
13 elsewhere?

14 THE WITNESS: On advice of counsel, I
15 am going to invoke my Fifth Amendment right
16 against self-incrimination.

17 CHIEF JUDGE MOORE: You've indicated
18 that you work 40 to 100 hours a week for
19 judicial matters here at the Court. Can you
20 give us any examples of work you've done in the
21 last week?

22 THE WITNESS: On advice of counsel, I
23 am going to invoke my Fifth Amendment right
24 under self-incrimination.

25 CHIEF JUDGE MOORE: Can you give us any

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1 examples of work you've done in the last year?

2 THE WITNESS: On advice of counsel, I
3 am going to invoke my Fifth Amendment right
4 against self-incrimination.

5 CHIEF JUDGE MOORE: What do you spend
6 the 40 to 100 hours a weeks doing?

7 THE WITNESS: On advice of counsel, I
8 am going to invoke my Fifth Amendment right
9 against self-incrimination.

10 JUDGE PROST: Were you hired as a term
11 law clerk or did the position convert after a
12 certain period of time?

13 THE WITNESS: It converted.

14 JUDGE PROST: Do you recall
15 approximately when?

16 THE WITNESS: At about two years,
17 roughly.

18 JUDGE PROST: And that's two years --
19 when did you start your employment here?

20 THE WITNESS: Early December of 2019,
21 and it converted in December -- November,
22 December of 2021.

23 CHIEF JUDGE MOORE: Did you tell anyone
24 that you were subpoenaed to appear here today?

25 THE WITNESS: Yes.

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1 CHIEF JUDGE MOORE: Who did you tell?

2 THE WITNESS: On advice of counsel, I
3 am going to invoke my Fifth Amendment right
4 against self-incrimination.

5 CHIEF JUDGE MOORE: We have an ongoing
6 judicial misconduct and disability proceeding.
7 I am going to instruct you now that you do not
8 delete any emails in your court account. Do you
9 understand that instruction?

10 THE WITNESS: Yes.

11 CHIEF JUDGE MOORE: Will you agree to
12 comply with that instruction?

13 THE WITNESS: Yes.

14 CHIEF JUDGE MOORE: ██████████, we
15 have no further questions at this time given
16 that you have taken off the table so many topics
17 related to your work here at the Court, and are
18 refusing to answer those questions.

19 We reserve the right to call you
20 again at some point in the future, and if at
21 some future date you can come up with
22 circumstances that you think would change
23 whether you're willing to cooperate or not,
24 please let us know.

25 THE WITNESS: Okay.

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1 CHIEF JUDGE MOORE: This concludes the
2 proceedings.

3 (Whereupon, at 10:15 a.m., the
4 deposition was concluded.)

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CERTIFICATE OF REPORTER

I, Susanne Bergling, do hereby certify that the foregoing proceedings were recorded by me via stenotype and reduced to typewriting under my supervision; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were transcribed; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.



SUSANNE BERGLING, RMR-CRR-CLR

AFFIDAVIT OF [REDACTED] [Affidavit 1]

1. My name is [REDACTED] and I work in the Information Technology Office (ITO) of the United States Court of Appeals for the Federal Circuit. My current title is Acting HelpDesk Supervisor. I have been employed in ITO since 2007. My responsibilities currently include supervising the work of ITO helpdesk team members. The facts in this affidavit come from my own personal observations to the best of my recollection.
2. On April 17, 2023, the ITO helpdesk received a request from Judge Newman's paralegal, [REDACTED] about assisting Judge Newman. Another member of the ITO staff, [REDACTED] called Judge Newman at approximately 3:30pm that afternoon to see how we could assist her. [REDACTED] had the call on speaker.
3. Over the course of that call, I heard Judge Newman say to [REDACTED] that someone at the court was deleting her emails and I heard Judge Newman threaten that she was going to get her lawyers to investigate why her email was being "hacked." [REDACTED] offered to assist her to locate any missing files or emails. In our experience, Judge Newman frequently misplaces her files or emails by moving them to other folders and forgetting where she put them or inadvertently deleting them. She refused [REDACTED] offer to help her locate the missing material indicating that she believed the court was responsible. I would describe Judge Newman as ranting, rambling, and paranoid.
4. The following day, April 18, 2023, ITO received more phone calls from Judge Newman's chambers. At approximately 3:00pm, [REDACTED] received a call from Judge Newman's law clerk, [REDACTED]. [REDACTED] placed the call on speaker so that I could also listen. [REDACTED] asked why Judge Newman's phones were being forwarded to Judge Newman's paralegal, [REDACTED]. [REDACTED] told [REDACTED] that we would investigate the issue and the call ended. [REDACTED] and I then checked the Cisco Call Manager, which indicated that her phones were not being forwarded.
5. A few minutes later, I answered a call from [REDACTED] and Judge Newman. They said that the reason why Judge Newman had been unable to hear incoming calls was because the volume on her phone had been turned all the way down.
6. At that point, I thought it was best to double check that Judge Newman's phones were properly working. When I called Judge Newman's line, Judge Newman picked up the phone. I informed Judge Newman that we were calling to make sure her phone was working correctly and that she could hear the calls properly. I recall Judge Newman then asking why [REDACTED] was on her line. I informed Judge Newman that the system was always set up to allow her paralegal to

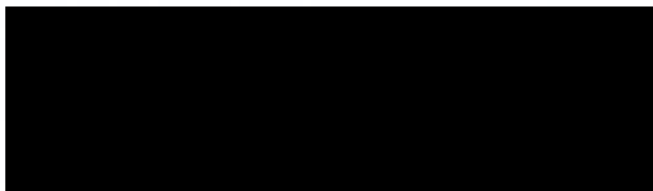
answer the phone and reminded her that this was the same with her prior judicial assistant. At that point, Judge Newman began to discuss her relationship with [REDACTED]. She said that [REDACTED] no longer wanted to work for her and that she was not taking it well. Judge Newman then said that she was going to have [REDACTED] “removed from the court” or “arrested.” Judge Newman seemed to be referring to the phone situation that day. Judge Newman then said that she was “going to make a big fuss” and planning to go to the Supreme Court and that you’ll hear more about this because it was going to be on the front page of the Washington Post. I assumed Judge Newman was discussing the ongoing investigation. Despite our assuring Judge Newman that the phones were working properly she again demanded that the court fix its phone system and insisted we “make it work.” For the most part during her rant, we remained silent to let her air her grievances which she expressed in a frustrated and very aggressive tone. The next morning, I went to Judge Newman’s chambers to check again and confirmed again that there were no issues with the phones.

7. On April 21, 2023, Judge Newman requested assistance because she was having trouble entering her PIN for her security key to log into her court-issued laptop. Judge Newman explained that she did not know why this was happening and claimed that she “turned it off overnight because it’s being hacked, as you know.” She seemed frustrated. I instructed Judge Newman to click “other user,” but she got nervous and asked: “who is the other user?” I tried to explain to Judge Newman that there was no other user and that this is a standard option as part of the operating system. She non-responsively said that there was a lot of other stuff going on and that “It’s all going to come out in a terrible uproar.” Once we were able to help Judge Newman get the text box to appear so she could enter her code, she had trouble entering her PIN in the text box. For about 5-10 minutes, I worked with Judge Newman to try and get the characters to populate but it would not work for her. I then instructed Judge Newman to restart the computer. While the computer was restarting, Judge Newman said: “What kind of mysterious stuff is going on?” Eventually, we were able to get her logged in. This process took 21 minutes. When other users have had similar problems, they can usually be resolved in a matter of minutes.
8. Over the last year, I’ve noticed in my interactions with Judge Newman what seems to be significant mental deterioration. Judge Newman routinely states that her computer is being “hacked” even though her concerns seem to be easily explained by Judge Newman forgetting what she was doing or not realizing that the network disconnected her based on inactivity. She seems agitated and paranoid, and we frequently have to calm her down in order to be able to help her with her problem.

9. I would estimate that Judge Newman requests ITO's assistance significantly more than anyone else at the court. Judge Newman will call 1-2 times a week and now seems to be calling every day or other day for assistance. Many of these requests are the result of Judge Newman not being able to remember where she saved a file or email or Judge Newman forgetting the steps to remotely access into the court's computer network. These are things that Judge Newman has done for years, and these processes have not changed. She never used to have a problem with these routine tasks but now seems to repeatedly forget how to do them. We have to walk her through the same steps over and over and she does not seem to remember them from day to day. I believe last month alone we had to walk her through how to login in remotely 5-6 separate times. She has been working remotely since covid began and logging in remotely the same way throughout that period.
10. Judge Newman has also had significant difficulty grasping our instructions on our recent calls making it difficult to assist her. For instance, on the morning of April 14, 2023, we worked with Judge Newman on the phone for over an hour to again walk her through the steps to log-in remotely. Again, this is the same simple process she has used for years. A significant portion of time was spent helping Judge Newman just to get to the main desktop screen. Another large portion was spent getting her to see the pulse secure icon which was right on the top right portion of her screen. ITO would typically be able to help a user resolve this issue in less than five minutes, but Judge Newman was simply not comprehending the simple process for using the application that she used to have no problem handling on her own.
11. She also calls frequently about being unable to use her fax machine. The problems often involve user error. She forgets to load paper or simply needs to reboot the machine.

12. Having worked with Judge Newman for years, I have noticed significant deterioration in her memory, confusion, and ability to understand and execute simple tasks over the last year. Though it is difficult to say this, I believe Judge Newman is simply losing it mentally.

I swear and affirm under penalty of perjury that the foregoing is true and correct.



Sworn to and subscribed before me this 24th day of April, 2023
Washington, DC

/s/ Annette B Young



ANNETTE B. YOUNG
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires November 14, 2026

AFFIDAVIT OF [REDACTED] [Affidavit 2]

1. My name is [REDACTED] and I worked as Judge Newman's paralegal from December 28, 2021 until April 19, 2023. The statements made in this affidavit come from my own personal observations and experiences to the best of my recollection.
2. I assisted Judge Newman with the day-to-day administration of her chambers, including: maintaining and updating her law library; preparing financial disclosure reports; maintaining chambers information and storage filing systems (electronic and paper); preparing orders, notices, and opinions for filing in the court's electronic and case management filing system; arranging meetings and conference agendas; providing assistance for law clerk orientation and training; providing chambers staff with assistance on the court's automated computer and software systems; monitoring deadlines, tasks, and determining need for action by Judge Newman; coordinating all general activities and serving as a liaison; performing a wide variety of special projects at Judge Newman's request; calendaring; receiving guests and visitors; scheduling and confirming appointments; helping prepare bench-books for argument; performing legal research for speeches and public appearances; tracking the status of draft opinions from Judge Newman's chambers; tracking draft opinions from other chambers that were circulated for vote; incorporating Judge Newman's edits; reviewing legal documents assigned by Judge Newman for completeness and accuracy; preparing draft opinions; and answering phones.
3. I provided the Special Committee investigating this matter a copy of reports that I routinely provided Judge Newman to monitor the status of opinions assigned to Judge Newman and the status of cases that Judge Newman was on but not the authoring judge. Those reports are labeled "Cases Assigned to Judge Newman Draft Tracker"; "Workload and Case Assignments" list; and "Cases Assigned to Other Panel Members." To the best of my knowledge, those reports were an accurate reflection of the status of cases in Judge Newman's chambers as of the time I provided the reports.
4. I was physically present in chambers almost every day. I typically worked from 7:30am to 4:30pm Monday through Friday. Judge Newman worked primarily remotely from her home, coming to the court approximately once or twice a month for the most part of my time at the court.
5. As part of my responsibilities, I had a one-on-one call with Judge Newman every workday at 9:30am to discuss these reports and the day-to-day administration of chambers, including Judge Newman's daily calendar. I also participated on

Zoom video calls with Judge Newman and her law clerks held every Monday at 12:00pm during which we discussed the status of chambers work.

6. About nine months ago, I witnessed Judge Newman needing to be assisted back to chambers from oral argument. I was told in Judge Newman's presence that she had fainted and could not make it back to chambers without help. I instructed Judge Newman to sit down by my desk in a chair to rest because I didn't feel comfortable having Judge Newman walking all the way across chambers to her desk. I wanted to monitor her condition for a period of approximately 10 to 15 minutes to ensure that she was safe to go home because she lived alone and would have no one at home to monitor her.
7. I have observed Judge Newman indicate on occasion that she needs to sit down because she lacked the energy to be able stand, which I attributed to forgetting to eat breakfast or staying up late working. I am also aware that chairs were placed along the length of the 8th floor hallway every 10 feet from our chambers to the judges' elevators because Judge Newman needed to take frequent breaks to walk the length of the hallway. At the end of the workday, Judge Newman would often have to sit to rest in the elevator bay outside the 8th floor prior to taking the elevator to the basement. I assisted Judge Newman by walking beside her when she departed to the basement to a staff member's car because I was afraid of her falling during the walk from the elevator to the car.
8. Judge Newman informed me that she liked to work on her couch at home and would fall asleep on seemingly a daily basis. Frequently on our 9:30am phone calls, when I would check in with Judge Newman about the previous workday, Judge Newman would say that she had been working on an opinion but that she was so comfortable on her couch that she had fallen asleep. Judge Newman routinely rested between the hours of 11:00am and 2:00pm, and I therefore tried to avoid calling Judge Newman until the late afternoon to avoid disturbing her and to allow Judge Newman to get her rest. I would only call Judge Newman if there was a filing notice that she was the action judge on because instructions would need to be sent to court services during court business hours.
9. I am aware that Judge Newman has had cardiac problems and has had at least one cardiac-related procedure. It is my understanding that Judge Newman regularly sees a cardiologist and audiologist in addition to seeing her primary care provider.
10. I have on multiple occasion seen Judge Newman have trouble recalling events and information. In my experience with Judge Newman, her memory loss and

confusion has increased significantly since I started at the court. On various occasions, I have also entered chambers and observed Judge Newman staring off into space with a blank look in her eyes. I would try and get Judge Newman engaged on something present because she seemed lost and confused.

11. On November 16, 2022, Judge Newman, the Circuit Librarian, [REDACTED], and I met to discuss a proposed display concerning Judge Newman's patent. On December 16, 2022, I presented to Judge Newman a draft of the narrative for the display and Judge Newman agreed to do a 3–4-minute audio recording. On January 4, 2023, I met with Judge Newman to select photos from her private personal collection for the display. On January 16, 2023, I again showed Judge Newman the pictures that she selected. However, on February 20, 2023, when Judge Newman was again shown the pictures, Judge Newman indicated that she had never seen them before and asked where I had gotten them. She seemed to have entirely forgotten about our prior recent meetings. I informed Judge Newman that the picture was taken in Cooperstown, NY in 1974 and was sent to her by the General Counsel of General Electronic Company and that I had provided this information to her on multiple previous occasions.

12. On Friday March [REDACTED], 2023, Judge Newman provided final edits of her dissent in [REDACTED] for upload to the Slip Op Application. The majority and dissent were released on Monday March [REDACTED], 2023. At chambers post-conference staff meeting on the very next day, Tuesday March [REDACTED], 2023, when discussing [REDACTED] ([REDACTED] PN, [REDACTED]), in which the [REDACTED], Judge Newman stated that the case reminded her of another matter, but she could not recall the case at all. I wrote "[REDACTED]" on a notepad because I was so concerned that [REDACTED] had been issued the day earlier and she couldn't remember. I spoke with [REDACTED] and [REDACTED] about this after Judge Newman left. [REDACTED] concurred that Judge Newman did not recall the opinion that was issued a day earlier. [REDACTED] thought it was [REDACTED] but could not confirm. I requested [REDACTED] and [REDACTED] to start having more intensive follow-up with Judge Newman on their cases. We discussed strategies to use during our weekly Zoom meetings. I informed them that it would be best if they picked up their oldest case presented it and developed a plan with Judge Newman to release within 2 weeks or less.

13. On our daily calls, I often needed to repeat information about the status of cases and opinions that were waiting for vote. In response to me bringing up cases that were awaiting her vote, Judge Newman would often tell me that she would try and review the draft that day, but I would not get any subsequent response

for weeks. Despite daily reminders, I was rarely successful in getting Judge Newman to get through our set agenda for the week. There were occasions when Judge Newman would tell me that she sent a vote out when the panel was still waiting for her vote. There were also occasions when Judge Newman had totally forgotten that the case was circulated to the panel for vote.

14. Over the last year, Judge Newman would make statements to me that her phone and computer were being “bugged” and “hacked” and that bloggers and the media were out to get her and bring her down. These would seem to occur at least once a week and most frequently on our Monday calls. I would follow up regularly with ITO, but ITO would inform me that there were no concerns or IT issues. I was very confused because no one else in chambers was having regular IT issues but Judge Newman seemed to have trouble on a weekly basis. I thought that Judge Newman was not able to keep up with the workload and that the statements about computer issues could have been a cover for her inability to keep up with her cases. She seemed constantly paranoid about this despite no actual basis for her to be concerned.
15. In my experience at the court, submitted cases are routinely circulated to other panel members for vote on the date of submission. I do not recall any case in which Judge Newman was ready to circulate a draft opinion to the other panel members by the submission date while I was working in Judge Newman’s chambers. Despite me prompting her, I would say it took her significantly longer than other chambers to circulate opinions on submitted cases. Judge Newman often declined to assign submitted cases to a law clerk to work on, saying she would rather first dig into the briefs. She would not follow up or respond to my requests to have a clerk assist with the preparation of a draft.
16. Frequently, I would encourage Judge Newman to assign pre-submitted cases to other panel members because of the backlog of Judge Newman’s docket. Judge Newman almost always refused to assign pre-submitted cases to other panel members because she was concerned that law clerks would not have any work to do or would run out of work.
17. On May █, 2022, I provided Judge Newman a completed first draft for review in the submitted case, █. My draft totaled 11 pages. This appeared to be a routine case that would merely require █. Having not received any response, I followed up with a short memo in May 2022. Judge Newman did not provide feedback or edits on my first draft until January █, 2023. Eight months

elapsed before I got any indication that Judge Newman had even reviewed the draft.

18. I was asked on another occasion to assist Judge Newman in drafting a submitted opinion in [REDACTED]. I was instructed by Judge Newman on multiple occasions during our Monday weekly Zoom chambers meetings not to send the draft for her review because she was working on other matters and that she would be caught up in a few days. The first draft was completed and saved on February [REDACTED], 2023. That case was submitted on February [REDACTED], 2023. When I left chambers, I was still waiting her approval to send the draft.
19. In my experience, similar requests from law clerks were repeatedly denied by Judge Newman during these meetings with months going by without any follow up by Judge Newman.
20. When Judge Newman would assign herself to author the opinion in an argued case, she would typically have a law clerk work on the first draft of the opinion for her review. In my experience, the law clerks turned in timely work product. For instance, a law clerk provided Judge Newman with a first draft opinion in [REDACTED] on January [REDACTED], 2023 (within 11 days of the date of submission). However, as of April [REDACTED], 2023, Judge Newman had not yet approved or asked me to incorporate any changes to the draft. Her standard practice was to make handwritten changes to drafts and then fax them to me to incorporate. That did not occur in that case. In [REDACTED], a law clerk provided Judge Newman a first draft on October [REDACTED], 2022 (10 days after submission). Judge Newman did not contact me to start making her edits to the draft until March [REDACTED], 2023. The amount of time between receiving a draft from a law clerk and Judge Newman turning to the drafts to make edits in [REDACTED] was typical of the delay in reviewing first draft opinions.
21. It was common for Judge Newman to go through multiple rounds of providing me with handwritten, faxed edits to drafts to incorporate before the drafts were returned to the law clerks. For instance, as of April [REDACTED], 2023, the Cases Assigned to Judge Newman report indicated "Draft # 15" for [REDACTED]. Law clerks then would often need to make substantial corrections to clean up and clarify these revisions because of the deterioration of the quality of the now-revised opinion.
22. I made Judge Newman aware on multiple occasions of the court's Clerical Procedure#3.5, which provides "[v]oting should be given priority in each chambers over other matters as a proven means of facilitating the work of the

court” and therefore “Judges shall vote on circulating precedential and nonprecedential opinions within five working days of receipt, or explain to the authoring judge why more time is needed.” However, in my experience, Judge Newman never followed this practice and stated to me that the rule did not apply to her in light of statements made to her by former Chief Judge Markey who at some time in the past told her she could take up to 30 days to vote.

23. Judge Newman would come to the National Courts Building primarily only on oral argument days and special events. Judge Newman was driven to and from the court by her [REDACTED] law clerk. It is my understanding that this law clerk would also drive Judge Newman to medical appointments and for special events and do her grocery shopping. The clerk would also help bring case materials back to Judge Newman’s home where Judge Newman primarily worked. When I was present at Judge Newman’s home, I saw folders and papers spread around and not organized. I offered to help organize her papers, but she declined. Particularly over the last few months, Judge Newman was having trouble keeping track of what case materials were at her home office and what case materials were in chambers. This was becoming very concerning to me because, for the most part, Judge Newman had been able to keep track of what case materials she had at her home office and now was unable to do so. She used to have everything prepared for oral argument. However, for the last three months, she would show up on argument days without case materials she would typically bring with her, and I would have to quickly try and get the same materials from the law clerks to ensure she was prepared for argument. This was very concerning that she would not be prepared for argument.

24. In early March 2023, Judge Newman disclosed to members of chambers that [REDACTED]. I confronted Judge Newman because disclosing [REDACTED] to her staff seemed entirely inappropriate and unnecessary, but she did not seem to understand the seriousness of the matter. To try and protect Judge Newman and make sure that such inappropriate disclosures were not repeated, I found it necessary to inform the Chief Judge about Judge Newman’s behavior. The Chief visited chambers the next day to speak with everyone, including Judge Newman, about the importance of maintaining such information confidential.

25. The nature of my job changed after the Chief Judge spoke to chambers.

26. Judge Newman and some of her law clerks stopped sharing information with me that was necessary to keep track of the status of cases in chambers and I was not even allowed to perform tasks I was previously handling. Judge Newman

did not provide me with any update or information about any changes to chambers' protocols or operating procedures.

27. Judge Newman stopped discussing work matters with me. Her tone on our daily 9:30am phone calls was now often angry and cold. Her refusal to discuss the day-to-day operations of chambers prevented me from performing my essential job duties. The only thing that she would discuss with me was when the Human Resources Department was going to post an advertisement for my job. Judge Newman refused or declined to take any action or respond to basic questions or requests related to the status of cases currently pending on her docket. She also refused to respond to basic questions about her calendar and daily schedule. This created a very hostile work environment for me, but I did not share this with anyone in chambers to protect Judge Newman.
28. Judge Newman even sent me a message along the lines of "Great, I'll be in those days," in response to me informing her that I would be out of the office, which I understood as suggesting she did not want to be in the office when I would also be there. I felt that she did not want me to be in chambers at all and that she wanted me gone. I was pained to get the message. However, I was also confused because she seemed to be obsessed with me being in chambers daily as her first question was always whether I was in chambers or at home.
29. Judge Newman wrongfully accused me of refusing to do work for her. Judge Newman requested that I make her edits to the most current version of a draft opinion she was working on with a law clerk. I informed Judge Newman that I was never sent the most current version of the draft to which she replied: "Are you refusing to do work?" She then said: "What is your problem, I've never had a problem with you doing work for me before." I told her there was no problem. Judge Newman then said: "What do I have to do, have another judge's paralegal do my work?" I responded, "No your honor, I do not think it would be appropriate for another judge's paralegal to do your work." To be clear, I was not refusing to do work. I simply couldn't do what she was asking because I had been cut off from communications.
30. Judge Newman withheld approval for leave and my timesheet. On March 30, 2023, Judge Newman verbally approved my request for annual leave for April 6-7, 2023 so that I could visit my family for Easter. After returning from leave, I received an email from Human Resources requesting Judge Newman forward confirmation of the approval of my leave request so that Human Resources could then process my submitted timesheet. I called Judge Newman and informed her that my approval for leave needed to be confirmed immediately or I would not

receive my paycheck for that pay period. Judge Newman requested that I forward the email from Human Resources and stated that she would send confirmation of the annual leave approval right away. As requested, I forwarded the email from Human Resources to Judge Newman. Judge Newman, however, never acknowledged receipt of the email and declined to send confirmation of my annual leave to Human Resources as she had agreed to do. Instead, I had to send HR a separate email in which Judge Newman had stated to other judges that I would be away on vacation for those days to receive my paycheck.

31. On April 13, 2023, I brought my concerns that Judge Newman was being abusive and retaliating against me to the Director of Workplace Relations and filed a request for assisted resolution. I also informed the Chief Judge that I could no longer work in this environment because Judge Newman had become so hostile toward me. I asked the Chief Judge for an alternative work arrangement that would allow me to work outside chambers but allow Judge Newman to continue to contact me as usual so I could perform my work for her. On April 14, 2023, the Chief Judge agreed to inform Judge Newman that while I would continue to perform my duties as Judge Newman's paralegal, my workstation would be moved outside of chambers. That same day, my phone and computer were moved to the clerk's office.
32. Although my workstation was no longer located in Judge Newman's chambers, I continued to handle all my usual day-to-day responsibilities, including my 9:30am daily call with Judge Newman; watering the plants; going to chambers to check and circulate the mail; checking the fax machine; continuing to answer calls to chambers and relay messages; circulating opinions and votes; and reaching out to the court's Information Technology Office per usual procedure to set up calls for chambers at Judge Newman's request or when she had problems with her IT equipment.
33. On April 18, 2023, I called Judge Newman for our routine 9:30am call. She made several comments along the lines of "you deserted chambers," "when are you returning to chambers," "this isn't going to work," "when are you going to be back," and "you are not doing anything for chambers," and "none of the staff can get any of their work done because you are not in chambers." This was completely untrue given I was continuing to perform my responsibilities and I had to her satisfaction previously been able to do all my work at times teleworking in the past. I would describe Judge Newman's behavior on the call as aggressive, angry, combative, and intimidating. The call made me feel very uncomfortable, anxious, and insecure because I had no idea what Judge

Newman was going to do or what her response was going to be, and I felt that if I responded she would get angrier and more upset.

34. On April 19, 2023, I called Judge Newman for our routine 9:30am call. After I said good morning, Judge Newman again started to complain about the alternative work arrangement. In an angry and dominant tone such that I knew I wasn't going to be allowed to speak, she told me that unless I moved back to chambers by 11:00am that she would accept my resignation even though I had not requested to resign on that day. She then hung up the phone on me without allowing me to respond. I understood Judge Newman as saying that she was going to terminate me immediately unless I dropped my request for an alternative work arrangement under the court's Employment Dispute Resolution Plan (Plan) while the Chief was investigating my claims.
35. This was not the only recent time I was subjected to inappropriate workplace conduct in Judge Newman's chambers. I told Judge Newman that her [REDACTED] law clerk was repeatedly contacting me off-business hours in the middle of the night including at 3:00am asking for a wake-up call and 1:00am call asking me not to a final review of a draft opinion that was out on clerk-to-clerk review. Judge Newman attributed these inappropriate communications to people having different schedules and did nothing about it. After Judge Newman's refusal to take any action to stop the late-night contacts, I reached out to the Director of Workplace Relations and the Chief Judge for assistance. I explained to them, as I did to Judge Newman, that the clerk could contact me by email at any time but that I needed her to refrain from texting and calling me in the middle of night for her personal and work-related requests. Despite my requests to stop, the clerk continued to contact me outside of regular working hours after bringing the matter to Judge Newman's attention.
36. I understood from the Director of Workplace Relations and the Chief Judge that my request for help would be confidential under the Plan. However, I am aware that after contacting the Director of Workplace Relations, Judge Newman emailed at least 95 people revealing all the details that I had disclosed in confidence, including my name as the complainant.
37. I would like to say that I love, revere, and admire Judge Newman personally and professionally for all her accomplishments and who she is as a person, which makes the last few months so much more difficult. The thing that causes me the greatest anguish is that Judge Newman has never acknowledged that she has acted inappropriately towards me and offered an apology. The past few months have been extremely stressful and have caused severe anxiety and emotional

distress brought on by Judge Newman's recent behavior towards me and refusal to communicate with me on any level.

I swear and affirm under penalty of perjury that the foregoing is true and correct.


_____/s/_____


Sworn to and subscribed before me this 25th day of April



_____/s/ Katie Hempill

District of Columbia

Signed and sworn to (or affirmed) before me on
25th Apr. by 
Date Number of individuals(s) making statement

Katie Hempill
Signature of Notarial Officer Seal
Office Administrator
Title of Office
My Commission Expires: 4/30/26

AFFIDAVIT OF [REDACTED] [Affidavit 3]

1. My name is [REDACTED]. I have worked in the Information Technology Office (ITO) of the United States Court of Appeals for the Federal Circuit for 17 years. My current title is Acting IT Director. Before that role, I worked as the court's Helpdesk Manager. As the Helpdesk Manager, my responsibilities included taking calls and answering emails asking for IT assistance and supervising the work of the more junior ITO helpdesk team members. The facts in this affidavit come from my own personal observations to the best of my recollection.
2. In my time with the court, I have worked with Judge Newman on several occasions in assisting with IT issues. When I first started, I was amazed that someone in her 80s, like Judge Newman was at the time, could pick things up so quickly and easily. However, particularly over the last few years, I've noticed a significant increase in Judge Newman forgetting how to perform basic tasks that used to be routine for her. Judge Newman seems to contact the ITO helpdesk once or twice a week usually confused because she forgets how to remotely connect to the court's network or because she forgets where she stored a file or an email.
3. Judge Newman routinely blamed her inability to find a file or email on someone "hacking" her computer. I would describe her on these calls as sounding paranoid. However, when I would scan for malware and viruses, there would be nothing that would suggest any malicious interference with her computer, and I would usually be able to find the file she was looking for on a desktop folder or other location where she had forgot she saved it to. Rather than take responsibility for the errors, she would blame hackers or the computer.
4. It now takes at least double the time to help Judge Newman with an IT issue than it does an average court user because she often cannot recall routine steps or processes and we will need to walk her through the entire process and repeat the same steps over and over again. These are things like remoting into the system that used to be no problem for Judge Newman until more recently.
5. Judge Newman was also unable to complete an annual security awareness training two years ago. That training required a user to watch a short 10-20-minute video presentation and then answer a series of questions based on the information provided in the video. The test is multiple choice and asks the same questions when a user retests. I believe Judge Newman tried and failed multiple times to answer enough questions to pass the training, because she was unable to retain the information from the video she had just watched. I had to sit with her and help feed her answers to the questions in order for her to pass the training. I do not have any record of her taking it last year and she hasn't started this year.

6. The helpdesk members, and particularly the more junior members of our staff, have also reported to me that Judge Newman is often harsh, forceful and demanding in their interactions with her and often deflects blame from not being able to do something to either the computer or “hackers.”

I swear and affirm under penalty of perjury that the foregoing is true and correct.

_____/s/ [REDACTED]_____
[REDACTED]

Sworn to and subscribed before me this 3rd day of May, 2023

[REDACTED]
Washington, DC

ANNETTE B. YOUNG
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires November 14, 2026



AFFIDAVIT OF [REDACTED] [Affidavit 4]

1. My name is [REDACTED] and I work in the Information Technology Office (ITO) of the United States Court of Appeals for the Federal Circuit and have been so employed since February 28, 2022. My responsibilities include fielding requests made to the ITO helpdesk about computer issues in chambers. The facts in this affidavit come from my own personal observations to the best of my recollection.
2. On April 17, 2023, the ITO helpdesk received a request from Judge Newman's paralegal, [REDACTED] about assisting Judge Newman with setting up a conference call and separately helping Judge Newman with what was only described as trouble with her computer.
3. After helping set up the requested conference call, I called Judge Newman at approximately 3:30pm that day to assist with the request regarding her computer issues. I initiated the call on speaker because I wanted another member of ITO, [REDACTED] to hear what was going on in case I needed assistance.
4. When I asked Judge Newman about the problem that she was having, Judge Newman said that she believed that her computer was being monitored, hacked and reviewed. She also mentioned her phone in that same conversation, however, she did not specify if she meant her personal landline or court-issued iPhone or any specific issues or events regarding her phone. She sounded annoyed, agitated, paranoid, and upset.
5. I asked Judge Newman to further explain some of the behaviors the computer was exhibiting so I could further troubleshoot.
6. I believe Judge Newman responded that things were disappearing.
7. I asked Judge Newman to elaborate on the things that were disappearing.
8. Judge Newman told me she would not elaborate because she was under the impression that the court may have been responsible for messing with her computer. She also suggested at one point that the court was interfering with her mail at her residence. I would describe Judge Newman's response as nonsensical because there was no reason to believe any of that was happening. She seemed to be in attack mode and mentioned "litigation."
9. Sometime during the events described in Paragraph 8, [REDACTED] came over to assist me.

10. Judge Newman stopped directing her attention to our conversation about the computer request when she got a call from another line. Because Judge Newman was no longer talking with us, we decided to hang up the call.
11. At approximately noon the next day, April 18, 2023, Judge Newman called the helpdesk and informed us that she had forgotten her security key to access her computer. I worked with [REDACTED] and he created a second security key so she was able to log into her computer. [REDACTED] instructed me to instruct Judge Newman that when she was done working for the day to call the helpdesk and we would come to retrieve the key and lock it in a secure location.
12. At approximately 3:10pm that afternoon, I fielded a call from Judge Newman's [REDACTED] law clerk, [REDACTED], asking why Judge Newman's chambers phone line was being forwarded to [REDACTED]. I told [REDACTED] that we would investigate the issue.
13. [REDACTED] and I together looked at the Cisco Call Manager, which showed that both Judge Newman's direct line and her chambers line were not being forwarded.
14. I called [REDACTED] with my phone on speaker so [REDACTED] could also hear to inform her that the lines were not being forwarded to [REDACTED]. In a demanding tone, [REDACTED] said that we needed to get this fixed. I believe I told [REDACTED] that we would continue to investigate, and the call ended.
15. At that point, [REDACTED] and I called Judge Newman's personal line and [REDACTED] picked up the phone. [REDACTED] and I concluded that it was likely Judge Newman and [REDACTED] must not have realized that, like all paralegals and judicial assistants, [REDACTED] has access to both Judge Newman's personal extension and the chambers line to answer calls on her behalf. We thought it was likely that [REDACTED] had answered a call that Judge Newman was expecting and that there was some confusion and miscommunication because [REDACTED] phone and workstation were not presently located in her chambers. ITO had only been directed to move [REDACTED] IT equipment and were never informed that he was no longer a member of chambers. Given this limited information, we did not remove [REDACTED] access to either the chambers line or Judge Newman's personal extension.
16. I briefly left the office. When I returned, [REDACTED] told me that [REDACTED] had called again to let us know that she and Judge Newman had realized that the volume was turned all the way down on Judge Newman's phone, which is why Judge Newman was unaware that there were calls coming to her line.

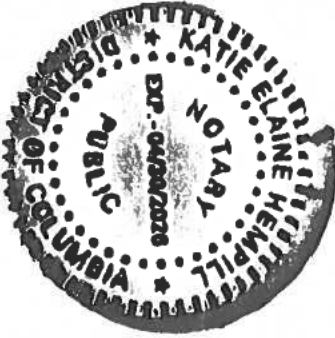
17. At 3:28pm, I fielded a call from [REDACTED] who asked whether we had been conducting any testing on the phones and noted that he had received a few calls that would ring once and then hang up. He mentioned that the calls had been coming from Judge Newman's chambers and one call from [REDACTED] personal cell phone. I told him that we were not doing any testing.
18. [REDACTED] then decided that it would be best just to confirm that Judge Newman's personal line was properly working. I overheard [REDACTED] talking with [REDACTED] to let him know what we were doing and heard [REDACTED] ask [REDACTED] not to pick up the phone when we called.
19. [REDACTED] then proceeded to call Judge Newman's direct line. [REDACTED] again placed the call on speaker. After a few rings, Judge Newman picked up the phone. I heard [REDACTED] explain to Judge Newman that we were calling just to confirm that her phone was working properly. After briefly discussing the situation regarding the phones, Judge Newman started to talk about [REDACTED]. She stated that [REDACTED] does not want to sit in chambers anymore and that she was not taking it well. Judge Newman went on to say that [REDACTED] asked the Chief to move him and she said something along the lines of the Chief and her were in a big fight. Judge Newman stated that she would have [REDACTED] removed from the court or arrested. She did not explain the reason why she would want to do so but we assumed that it related to the prior calls about Judge Newman's phone lines being forwarded to [REDACTED]. Judge Newman then proceeded to say that she was going to make a big fuss and mentioned the Supreme Court as well as the Washington Post. I understood her to be talking about the ongoing investigation involving Judge Newman. She then demanded that we needed to fix the phone system and ended the call. I would describe the call as bizarre and unnecessarily hostile toward [REDACTED].
20. Upon the end of the call, I returned to my office with [REDACTED]. We drafted out notes detailing the day's events, which I sent in an email to [REDACTED] at 4:23pm that day reporting these events. I've attached a copy of that email to this affidavit.
21. Judge Newman did not call to have ITO pick up the security key. The following day [REDACTED] went to retrieve the key from chambers.

I swear and affirm under penalty of perjury that the foregoing is true and correct.

____/s/ [Redacted Signature]

Sworn to and subscribed before me this 20th day of April, 2023

____/s/ Katie Efferill

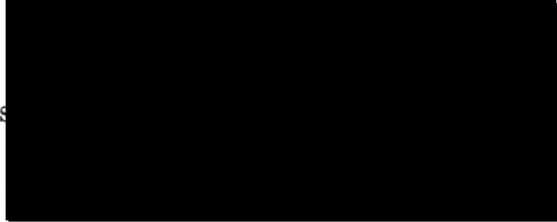


AFFIDAVIT OF [REDACTED] [Affidavit 5]

1. My name is [REDACTED] and I work in the Information Technology Office (ITO) of the United States Court of Appeals for the Federal Circuit as an Executive Assistant. On May 16, 2023, [REDACTED] asked me to accompany him to assist Judge Newman retrieve some electronic files. The facts in this affidavit come from my own personal observations to the best of my recollection.
2. We went up to Judge Newman's chambers around 2:30pm. My understanding is that Judge Newman needed assistance locating her financial disclosure files so that she could file her report. [REDACTED] told Judge Newman that he knew where the files were located on her shared network drive because he had helped her judicial assistants in the past with the same issue, but Judge Newman said there was no point and he was wasting her time because the files were not on her computer.
3. As [REDACTED] walked closer to the computer to try and show her where the files were Judge Newman yelled at [REDACTED] that he could not touch her computer and that she did not want him to access her computer. At one point, Judge Newman pointed to the workstation in front of her chambers and said that the computer there had been taken and demanded it be returned to her chambers. I recall Judge Newman saying around this point in the conversation that [REDACTED] took her files and that he was a thief. I understood that she was referring to [REDACTED]. Judge Newman was pacing back and forth and visibly angry and frustrated. [REDACTED] repeated he could help her locate the files on her drive.
4. [REDACTED] then offered to help one of her law clerks find the files so that she could file the financial disclosure report. Judge Newman said she needed them for other things and needed someone else to do what she said was clerical work.
5. Judge Newman's behavior did not make sense to me because it was my understanding that we went up to her chambers to help Judge Newman get files she could not locate and [REDACTED] was so certain that the files were on her shared computer drive, but she was refusing to let him help her. I found Judge Newman's behavior during this whole event to be very bizarre and confusing.

I swear and affirm under penalty of perjury that the foregoing is true and correct.

____/s/



Sworn to and subscribed before me this 19th day of May, 2023

____/s/ Katie Hempill

District of Columbia

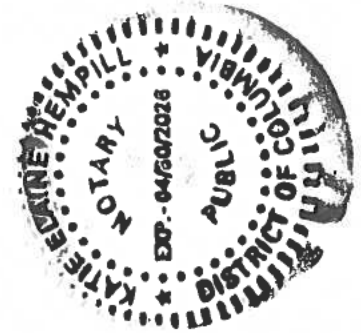
Signed and sworn to (or affirmed) before me on
5/19/23 by [Redacted]
Date Name (of individual(s) making statement)

Katie Hempill
Signature of Notarial Officer

Office Administrator
Title of Office

Seal

My Commission Expires: 4/30/2026



AFFIDAVIT OF [REDACTED] [Affidavit 6]

1. My name is [REDACTED] and I work in the Information Technology Office (ITO) of the United States Court of Appeals for the Federal Circuit. My current title is Acting HelpDesk Supervisor. I have been employed in ITO since 2007. My responsibilities currently include supervising the work of ITO helpdesk team members. On May 16, 2023, I was asked to assist Judge Newman retrieve electronic files so she could file her financial disclosure report. The facts in this affidavit come from my own personal observations to the best of my recollection.
2. Around 9:00am on May 16, 2023, I received a message from the Clerk's Office asking if I could assist Judge Newman locate some files. I said yes. I assumed this was about her financial disclosure files because it is around this time every year that we get a call from her chambers to assist with this issue. At 2:30pm, I was told by the Clerk's Office that Judge Newman was ready for ITO to assist her. I asked ITO's Executive Assistant, [REDACTED] to accompany me.
3. Judge Newman had a very surprised look on her face when she saw me. I told Judge Newman that I was there to help retrieve some of her files and I asked what she was looking for. Judge Newman looked angry that I was there and said she needed her financial disclosure files. I said that I could help her with that request and asked Judge Newman if I could show her where the files were located on her computer. I started to walk toward Judge Newman's computer so that I could show her where the files were located, but Judge Newman angrily said no.
4. I asked Judge Newman if I could show her on the computer stationed where her judicial assistant would typically sit. She again in an angry voice said no. Around this point, Judge Newman said that [REDACTED] had stolen her files and that he had stolen her phone and computer. Then insisted that she wanted her "twenty-year old computer" and phone back in chambers. I understood Judge Newman to be referring to the computer and phone assigned to [REDACTED] that was originally moved out of chambers when [REDACTED] went to the Clerk's Office. The computer remained with [REDACTED] Although the phone was initially moved along with [REDACTED] it was later returned to chambers. Judge Newman must not have been aware that the phone had been returned.
5. I tried to explain to Judge Newman that the files were on her shared computer network drive if she would only look and that all files of Judge Newman's on the court computer that was assigned to [REDACTED] when he started to work for Judge Newman were moved to her shared network drive and that [REDACTED] no longer had credentials to access her files and drive. But Judge Newman did not want to hear it or let me get a word in. She was clearly upset and frustrated and

was walking back and forth mumbling about how her computer and phone had been taken away from her when that was not the case.

6. I asked Judge Newman if she wanted me to help a law clerk access the files so that she could file her financial disclosure report. She said no and indicated that she wanted someone in the Clerk's Office or [REDACTED] to do it for her.
7. At that point, I got worried that Judge Newman was getting so angry that she might collapse or have a heart attack if the conversation continued. I told Judge Newman that we would get back to her and told [REDACTED] that we should go.
8. I was left shaken and upset from this experience. I always had a good relationship with Judge Newman and was just trying to help her locate the files that I believe are on her network shared drive and do not believe were taken by [REDACTED].

I swear and affirm under penalty of perjury that the foregoing is true and correct.

[REDACTED]

Sworn to and subscribed before me this 18th day of May 2023
Washington, DC

/s/ Annette B. Young

ANNETTE B. YOUNG
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires November 14, 2026



AFFIDAVIT OF [REDACTED] [Affidavit 7]

My name is [REDACTED]. I am the [REDACTED] Human Resources for the United States Court of Appeals for the Federal Circuit and have been employed by the court since January 3, 2007. I assisted Judge Newman with the hiring of several prior and current employees, including [REDACTED] to fill Judge Newman's paralegal/judicial assistant position. I also assisted Judge Newman with the paperwork and recruitment process for the judicial assistant position that was posted on the court's website on May 11, 2023, and for the reemployment of [REDACTED] on a temporary basis. The facts in this affidavit come from my own personal observations to the best of my recollection.

1. On April 24, 2023, I contacted Judge Newman after Chief Judge Moore approved Judge Newman's request to bring Judge Newman's previous judicial assistant, [REDACTED] on in a temporary role. I also notified Judge Newman that the Chief Judge agreed to seek approval of a waiver from the Director of the Administrative Office so that [REDACTED], as a re-employed annuitant, could receive both her annuity and an unreduced salary while she was working. I informed Judge Newman that I was happy and ready to assist with this process and asked Judge Newman if I could reach out to [REDACTED] to begin the rehiring and waiver process.

2. On April 27, 2023, I contacted Judge Newman shortly after the Chief Judge had emailed Judge Newman to approve Judge Newman's request to fill her open permanent judicial assistant/paralegal position. I emailed Judge Newman a draft vacancy announcement for the position and asked her to review it and let me know if she had any changes. I also indicated to Judge Newman in that email that I would post the announcement on the court's website, the JNet, and www.uscourts.gov once she had finalized it. I further asked Judge Newman to please let me know how she would prefer to receive the application packages for qualified applicants, reminding her that previously she had asked me to send them in batches on a weekly basis and noted that I would be happy to do the same this time if that was her preference.

3. It took a long time for Judge Newman to permit me to move forward on both the temporary rehire and permanent recruitment. I asked Judge Newman's approval to get started on the necessary paperwork to get a waiver for [REDACTED] at least four times. It was not until May 10, 2023, that she finally approved the vacancy announcement as well as giving approval to bring [REDACTED] on in a temporary role as a re-employed annuitant. I had over 20 email and phone call exchanges with Judge Newman over this time trying to get her approval. This was a more difficult process than my experiences helping other judges with their recruitments and unlike my prior dealings with Judge Newman because of the length of time it took and because I had to answer the same questions repeatedly and then wait for answers on those same issues to move forward.

4. Judge Newman seemed to have a particularly difficult time grasping the fact that the Chief Judge had agreed to seek approval of an offset waiver so that ██████ could receive her retirement annuity and collect an unreduced salary. I informed Judge Newman of this by phone and by email on April 24, 2023. However, at 7:35pm on May 1, 2023, Judge Newman sent me an email stating that it would be “inappropriate to ask a retired federal employee, who offers interim assistance out of loyalty to me, to yield her federal pension in exchange for an uncertain few weeks or days of work.” The next day, May 2, 2023, at 9:58am, I sent an email reminding Judge Newman that the Chief Judge agreed to seek approval to waive the salary offset and, if approved, ██████ “would receive her full pension and salary for hours worked here at the court.” I again reiterated that “I am happy and ready to assist with [the] waiver request process.” At 10:32am, Judge Newman responded by saying “To be clear: Are you saying she would receive no additional pay for working at the court?” At 10:40am, I sent Judge Newman another email again repeating that ██████ “would receive her full annuity (pension payment), as well as pay for hours worked at the court.” Despite my repeatedly assurances, Judge Newman continued to express concern in her response at 11:04am, stating “What would she be paid for her work at the court? What formalities would be applied to her pension status?” I responded a few minutes later at 11:18am again trying to assure Judge Newman that, if the waiver were approved, ██████ would be paid at the same grade and step that she previously held and that “[t]here would be absolutely no effect on her pension.” Judge Newman sent a response that night at 9:35pm saying “To be clear: will her annuity payment continue undiminished and automatically, paid by regular deposit or whatever system is now in place for her annuity? Then will she be separately paid for the days worked during each pay period, as certified by me?” I emailed Judge Newman again the next morning at 9:12am to reiterate that “Yes, if approved by the Director, her annuity payments will continue uninterrupted” and she would also receive separate earnings by direct deposit. A copy of these emails is attached.

5. I also encountered several issues trying to get Judge Newman to finalize a vacancy announcement for the permanent position. On April 27, 2023, I sent Judge Newman a draft vacancy announcement and informed her that I would post the announcement once she approved. Three days later, April 30, 2023, Judge Newman sent me an email asking for the vacancy announcement that was used for the recruitment that resulted in her prior hire of ██████. I emailed Judge Newman a copy of that prior announcement on May 1, 2023. The following day, May 2, 2023, at 1:27pm, Judge Newman sent me an email with a link to a posting from the Administrative Office’s website for a judicial assistant position at the District of Columbia Circuit Court of Appeals and asked that I use that description for her position. However, the link she sent to the announcement did not work and the announcement was no longer available. I emailed Judge Newman back at 2:04pm, to let her know the link was broken and that I could not access the posting. I also asked

Judge Newman to confirm that she would like to hire a judicial assistant rather than a paralegal and provided a draft of an updated vacancy announcement with the appropriate duties and requirements for a judicial assistant and asked her to review the announcement. I did not hear back from Judge Newman on this until May 9, 2023, when she sent me an email saying that she "had been awaiting word that Judge Moore has approved the hiring of a permanent JA on posting of that opening" and that if she "missed receipt of notice of such approval, please resend." I responded by reminding Judge Newman (and including the prior email) that the Chief Judge had approved the recruitment on April 27, 2023. Judge Newman seemed to be confused about whether she could fill the position or just post the ad. After the Chief Judge had to again explain to her that she could fill the position, Judge Newman approved the posting on May 10, 2023. I attached a copy of these emails.

I swear and affirm under penalty of perjury that the foregoing is true and correct.

/ [Redacted]

Sworn to and subscribed before me this 23rd day of May, 2023

/s/ Katie Hempill

District of Columbia

Signed and sworn to (or affirmed) before me on
5/23/23 by [Redacted]
Date Name(s) of Individual(s) making statement

Katie Hempill
Signature of Notarial Officer

Office Administrator
Title of Office

My Commission Expires: 4/30/2026

Seal



From: [REDACTED]
To: [Judge Pauline Newman](#)
Subject: RE: contract services
Date: Wednesday, May 3, 2023 9:12:33 AM

Judge Newman,

Yes, if approved by the Director, her annuity payments will continue uninterrupted and will continue to be paid by regular deposit by OPM. Her benefits would all remain through OPM. In addition to her pension annuity payment, she will also receive separate earnings by direct deposit for whatever hours she works on the bi-weekly basis as your JA. She will be paid on the normal, established pay dates like all other court/judiciary employees. When she receives her first check will be a matter of exactly when in the pay period she starts her employment.

[REDACTED] would not be entitled to travel reimbursement.

I hope this helps, let me know if you have any additional questions.

[REDACTED]

From: Judge Pauline Newman [REDACTED]
Sent: Tuesday, May 2, 2023 9:35 PM
To: [REDACTED]
Subject: Re: contract services

Many thanks, [REDACTED]

To be clear: will her annuity payment continue undiminished and automatically, paid by regular deposit or whatever system is now in place for her annuity?

Then will she be separately paid for the days worked during each pay period, as certified by me?

How long thereafter before she is paid? Will she receive a separate check? Is she entitled to travel reimbursement?

Anything else we should know ?

PN

Sent from my iPhone

On May 2, 2023, at 11:18 AM, [REDACTED] wrote:

Judge Newman,

She would be paid at the same grade/step that she held when she was

actively employed in your chambers (JSP 11/9). If the waiver is approved, she would continue to receive her pension at the amount currently received and at the same monthly interval. There would be absolutely no effect on her pension. She can work on an intermittent basis, however, HR will need to be notified by chambers each week of the hours worked as we will have to submit these to the AO in a timely manner so that she can be paid.

The AO-70, which is the form submitted to the Director of the AO in order to seek exemption from the salary off-set. I have completed the form with as much information as possible without additional details from you (start date) and [REDACTED] (her Civil Service Annuitant number). Once I have the missing information, I will need your signature and Chief Judge Moore's signature. I will then send it to the AO for approval by the Director. Once that is granted I will notify you and we can officially bring [REDACTED] back on.

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

From: Judge Pauline Newman [REDACTED]
Sent: Tuesday, May 2, 2023 11:04 AM
To: [REDACTED]
Subject: Re: contract services

What would she be paid for her work at the court? What formalities would be applied to her pension status?

The arrangement should be that i would ask her to work as the need arises, and she would be paid for days worked. I would like to see the paperwork implementing this arrangement, including the pay rate.

Such paperwork should assure that her pension is unaffected.

Sent from my iPhone

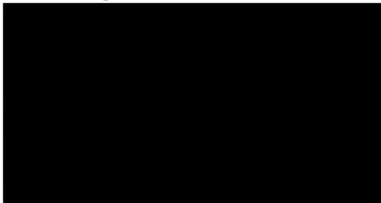
On May 2, 2023, at 10:40 AM, [REDACTED]
wrote:

Judge Newman,

She would receive her full annuity (pension payment), as well as pay for hours worked at the court. So that I can begin completing the form for the waiver, I will need to know the following:

1. Full-time or part-time
2. Approximately how many hours per week
3. Effective date of return

Thank you,



Human Resources

U.S. Court of Appeals for the Federal Circuit



From: Judge Pauline Newman [redacted]

Sent: Tuesday, May 2, 2023 10:32 AM

To: [redacted]

Subject: Re: contract services

Thank you, [redacted] To be clear: Are you saying she would receive no additional pay for working at the court?

PN

Sent from my iPhone

On May 2, 2023, at 9:58 AM, [redacted]

[redacted] wrote:

Judge Newman,

When I wrote to you on April 24th regarding [redacted] possible return, I notified you that Chief Judge Moore has agreed to seek approval from the Director of the

AO to waive the salary off-set that [REDACTED] would face as a re-employed annuitant. This means that she would receive her full pension and salary for hours worked here at the court. The Administrative Office allows for courts to seek approval for an exemption to this regulation under certain exceptional circumstances. I am happy and ready to assist with waiver request process.

[REDACTED]

Human Resources

U.S. Court of Appeals for the Federal Circuit

[REDACTED]

From: Judge Pauline Newman

[REDACTED]

Sent: Monday, May 1, 2023 7:35 PM

To: [REDACTED]

Cc: All Judges [REDACTED]

Subject: Re: contract services

[REDACTED]

Concerning interim secretarial assistance, does the court have a contract agency that conforms to the rules that you describe? It is inappropriate to ask a retired federal employee, who offers interim assistance out of loyalty to me, to yield her federal pension in exchange for an uncertain few weeks or days of work.

The court's administration is required to provide the judges with essential services. As you recall, I asked you several weeks ago to post this position. You did not do so, and you only later informed me that you were prohibited from doing so. The present delay ensued.

The withdrawal of clerical services requires immediate remedy, along with restoration of my position as an active judge of the court. The court today issued the July appeal hearing calendar and excluded me from a fourth successive month of hearings. I require immediate revision.

Judge Newman

Sent from my iPhone

On May 1, 2023, at 3:24 PM, [REDACTED]
[REDACTED] wrote:

Judge Newman,

Please find attached the vacancy announcement from your 2021 Paralegal recruitment.

With regard to [REDACTED], AO procurement regulations only allow for us to bring her on as a contractor if she is working with a temporary staffing agency and we contract with the agency for her services. Otherwise, contracting with [REDACTED] directly would be considered a personal services contract. Personal service contracts are explicitly prohibited by the AO, with two exceptions: IT contractors funded through JITF, and narrowly and clearly defined "experts". The AO policy on personal services contracts can be found in the Guide to Judiciary Policy here: <https://jnet.ao.dcn/policy-guidance/guide-judiciary-policy/volume-14-procurement/ch-5-special-categories-procurements#510>.

If [REDACTED] is working with a temporary staffing agency, please let me know and I can work with our procurement team on next steps. Otherwise, we have to appoint her as a court paid employee.



Human

Resources

U.S. Court of Appeals for the Federal Circuit



From: Judge Pauline Newman



Sent: Sunday, April 30, 2023 6:35 PM

To:



Subject: Re: Paralegal Recruitment

█, please send me a copy of the prior announcement that was used for my position

For █, she is not to be a reemployed annuitant, but a contract employee whose work days will be as she and I agree.

Sent from my iPhone

On Apr 27, 2023, at 10:25 AM,



wrote:

Judge Newman,

In light of Chief Judge Moore's email this morning, I am sending along the draft of the vacancy announcement for your chambers paralegal. Please review the announcement and let me know if you have any

changes. Once the announcement is finalized, I will post it to the court website, the JNet, and to USCourts.gov. Please let me know how you prefer to receive the application packages for qualified applicants. I believe that when we worked together on your last recruitment I would pull them together into a PDF packet and send them up in batches about once a week. I am happy to do the same this time, if you like.

Additionally, please let me know if I may reach out to [REDACTED] regarding her temporary return. Because she will be coming back to the court as a re-employed annuitant (retiree), there is a little more involved with processing her appointment and I would like to begin the process so that we can get the salary exception to the AO for approval by the Director as soon as possible. I am on leave beginning at 1:30 this afternoon and will be out tomorrow as well.

Thank you,

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

From: [REDACTED]
To: [Judge Pauline Newman](#)
Subject: RE: Paralegal Recruitment
Date: Monday, May 1, 2023 3:24:00 PM
Attachments: [Job Announcement - Paralegal to a Federal Judge \(Newman\).pdf](#)

Judge Newman,

Please find attached the vacancy announcement from your 2021 Paralegal recruitment.

With regard to [REDACTED], AO procurement regulations only allow for us to bring her on as a contractor if she is working with a temporary staffing agency and we contract with the agency for her services. Otherwise, contracting with [REDACTED] directly would be considered a personal services contract. Personal service contracts are explicitly prohibited by the AO, with two exceptions: IT contractors funded through JITF, and narrowly and clearly defined "experts". The AO policy on personal services contracts can be found in the Guide to Judiciary Policy here: <https://jnet.ao.dcn/policy-guidance/guide-judiciary-policy/volume-14-procurement/ch-5-special-categories-procurements#510>.

If [REDACTED] is working with a temporary staffing agency, please let me know and I can work with our procurement team on next steps. Otherwise, we have to appoint her as a court paid employee.

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

From: Judge Pauline Newman [REDACTED]
Sent: Sunday, April 30, 2023 6:35 PM
To: [REDACTED]
Subject: Re: Paralegal Recruitment

[REDACTED] please send me a copy of the prior announcement that was used for my position

For [REDACTED], she is not to be a reemployed annuitant, but a contract employee whose work days will be as she and I agree.

Sent from my iPhone

On Apr 27, 2023, at 10:25 AM, [REDACTED] wrote:

Judge Newman,

In light of Chief Judge Moore's email this morning, I am sending along the draft of the vacancy announcement for your chambers paralegal. Please review the announcement and let me know if you have any changes. Once the announcement is finalized, I will post it to the court website, the JNet, and to USCourts.gov. Please let me know how you prefer to receive the application packages for qualified applicants. I believe that when we worked together on your last recruitment I would pull them together into a PDF packet and send them up in batches about once a week. I am happy to do the same this time, if you like.

Additionally, please let me know if I may reach out to [REDACTED] regarding her temporary return. Because she will be coming back to the court as a re-employed annuitant (retiree), there is a little more involved with processing her appointment and I would like to begin the process so that we can get the salary exception to the AO for approval by the Director as soon as possible. I am on leave beginning at 1:30 this afternoon and will be out tomorrow as well.

Thank you,

[REDACTED]

Human Resources

U.S. Court of Appeals for the Federal Circuit

[REDACTED]

From: [REDACTED]
To: [Judge Pauline Newman](#)
Subject: RE: Position description
Date: Tuesday, May 2, 2023 2:04:00 PM
Attachments: [Job Announcement - JA to a Federal Judge \(Newman 2023\).doc](#)

Judge Newman,

Just to be sure that I clearly understand, you want to recruitment to be for a Judicial Assistant and NOT a paralegal, is that correct? The link you provided below is not working and I do not see the announcement on the DCCA website, so I have attached an updated announcement that includes the language we typically use on JA announcements. Please let me take a look at it and let me know if you have changes. Once I hear back I will post it.

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

From: Judge Pauline Newman [REDACTED]
Sent: Tuesday, May 2, 2023 1:27 PM
To: [REDACTED]
Cc: Judge Pauline Newman [REDACTED]
Subject: Position description

[REDACTED] Please use the attached position description, from the AO site illustrating the DC Court of Appeals, -- along with the other information concerning the materials to be submitted, address, etc. Please let me know when it is posted.
PN

Court Name/Organization:	District of Columbia Circuit Court of Appeals
Overview of the Position:	The Judicial Assistant provides administrative, case-related, and management support to a federal circuit judge and is responsible for all day-to-day operations of the judge's chambers. The Judicial Assistant exemplifies and fosters a positive approach of professionalism, teamwork, mutual respect, and dedication to public service. The Judicial Assistant is also an ambassador for and representative of the chambers in all interactions with court personnel, other judges' chambers, and the public. The ideal candidate for this position is detail-oriented, possesses strong organizational, administrative, and management skills, enjoys working in a challenging and collaborative environment on a wide variety of tasks, is a

	creative thinker and problem-solver, maintains a calm demeanor under pressure, and upholds the highest level of confidentiality. The position will not be available sooner than July 2023.
Location:	Washington, DC
Opening and Closing Dates:	03/01/2023 - Open Until Filled
Appointment Type:	Permanent
Classification Level/Grade:	Grade 5 - Grade 11
Salary:	\$42,870 - \$102,166
Announcement Number:	USCA-23-05

[LINK TO JOB ANNOUNCEMENT](#)

[REDACTED]

From: [REDACTED]
Sent: Tuesday, May 9, 2023 2:38 PM
To: Judge Pauline Newman
Cc: Chief Judge Kimberly A. Moore
Subject: RE: HR question
Attachments: Support services; Paralegal Recruitment

Hi Judge Newman,

The Chief gave approval to recruit for the permanent refill of your JA/paralegal position on April 27th. Please see the email attached from the Chief at 9:43AM on that date where she states that "HR will begin the process of posting for a replacement." Shortly after the Chief's email, I followed-up with an email sent directly to you on the same date at 10:23 AM (also attached) letting you know that in light of the Chief's approval I was sending along a draft vacancy announcement for your review/approval and that once the announcement was finalized I would post it publicly.

After the two emails attached and referenced above, you and I exchanged several emails regarding the announcement (highlighted below). The last email in this exchange is an email I sent to you on May 2nd, in which I attached a draft announcement for a JA rather than a paralegal and asked that you review and approve so that I could move forward and post it.

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

From: Judge Pauline Newman [REDACTED]
Sent: Tuesday, May 9, 2023 1:42 PM
To: [REDACTED]
Cc: Chief Judge Kimberly A. Moore [REDACTED]
Subject: Re: HR question

Thank you, [REDACTED]. I have been awaiting word that Judge Moore has approved the hiring of a permanent JA on posting of that opening. If I missed receipt of notice of such approval, please resend.
PN

Sent from my iPhone

On May 9, 2023, at 1:10 PM, [REDACTED] wrote:

Chief Judge Moore,

I have been in communication with Judge Newman regarding both the temporary rehire of [REDACTED] and the recruitment for a permanent fill of the JA/paralegal position in her chambers for several weeks. I am currently at a standstill with both [REDACTED] rehire and the recruitment, as I am awaiting responses/approvals from Judge Newman.

Specifically, I am waiting for Judge Newman to confirm specific details of [REDACTED] return and provide approval for me to begin the process of seeking a salary offset waiver from the AO. My last email to Judge Newman regarding [REDACTED] was on May 3rd and I have not yet received a response from her. [REDACTED] called me yesterday with HR questions specific to returning to the court as a rehired annuitant and I am expecting a follow-up email from her. I am also waiting for Judge Newman to approve the draft JA vacancy announcement for her chambers position. My last email to her regarding this matter was on May 2nd and I have not yet received a response from her.

Below is timeline of my communication with Judge Newman regarding both matters. Communications in blue primarily relate to [REDACTED] rehire and items in red primarily relate to the recruitment for a permanent fill.

Monday, April 24, 2023

1. 2:20 PM: Telephone call with Judge Newman to discuss the temporary rehire of [REDACTED] which you approved for a period of up to 90 days, with the possibility of an extension. I also notified her of your approval to seek a waiver of the salary offset that rehired annuitants are subject to, so that [REDACTED] could potentially receive her OPM annuity as well as a full salary for time worked for the court. Judge Newman denied my request to reach out to [REDACTED] to begin the rehire process and stated that I was not to contact [REDACTED] until the recruitment process begins for a permanent replacement for her JA/paralegal vacancy.
2. 4:09 PM: I sent a follow-up e-mail to Judge Newman shortly after our call to restate the approval to temporarily rehire [REDACTED] and to again offer to reach out to [REDACTED].
3. 4:53 PM: Judge Newman responded by email indicating that she requires a permanent as well as temporary solution to her judicial needs. No response to my inquiry about contact [REDACTED].

Tuesday, April 25, 2023

1. 2:49 PM: I responded to Judge Newman's last email and again asked if I could begin the process of bringing back [REDACTED] to assist her in chambers.
2. 3:53 PM: Judge Newman responded by asking me to assure her that the permanent JA recruitment will be listed promptly.

Wednesday, April 26, 2023

1. 3:24 PM: I responded to Judge Newman and explained that I was not in the position to guarantee the posting of the permanent position due to the judicial council vote prohibiting her from hiring any permanent staff and again asked for permission to move forward with [REDACTED].
2. 3:55 PM: Judge Newman responded stating that the court has an obligation to provide her "statutory judicial services" and that she understands my email to mean that the judicial council continues to refuse to allow her JA position to be filled.

Thursday, April 27, 2023

1. 10:25 AM: As a follow-up to the email that you sent to Judge Newman at 9:43 AM, which authorized the recruitment for a permanent replacement for [REDACTED], I sent an email to Judge Newman containing a draft vacancy announcement for a chambers paralegal. I indicated that I would get the announcement posted as soon as she approved it. I also asked if I could reach out to [REDACTED] to begin the process of her temporary rehire.

Sunday, April 30, 2023

2. 6:35 PM: Judge Newman responded to my email asking for a copy of the vacancy announcement that was used for the recruitment for her chambers paralegal in 2021. Judge Newman also stated that she did not want [REDACTED] to return as a re-employed annuitant but rather as a contractor.

Monday, May 1, 2023

1. 3:25 PM: I sent Judge Newman a copy of the 2021 paralegal vacancy announcement, as requested. My email also explained the AO procurement regulations related to contract employees and provided links to the regulations. I explained that the only way for [REDACTED] to return as a contractor would be through a temporary staffing agency contracted by the court.
2. 7:35 PM: Judge Newman emailed with a question about contracting agencies. She also expressed concern regarding [REDACTED] facing a salary offset as a reemployed annuitant and provided comments regarding the delay in recruiting for her permanent position and the oral argument paneling for July.

Tuesday, May 2, 2023

3. 9:58 AM: I responded to Judge Newman reminding her that on April 24th, I notified her that you agreed to seek approval from the Director of the AO to waive the salary offset for [REDACTED]. I clearly explained again that the waiver would allow [REDACTED] to receive her full pension AND salary for hours worked at the court. I stated that I was "happy and ready to assist with the waiver request process."
4. 10:32 AM: Judge Newman emailed "To be clear: Are you saying she would receive no additional pay for working at the court?"
5. 10:40 AM: I wrote to Judge Newman explaining again that [REDACTED] would receive her full annuity (pension payment), as well as pay for hours worked. I asked the judge to provide the following information so that I could complete the waiver request form: 1) whether [REDACTED] would be full-time or part-time; 2) approximately how many hours per week [REDACTED] will work; and 3) the effective date of [REDACTED] return.
6. 11:04 AM: Judge Newman wrote to ask if [REDACTED] would be paid for her work at the court and what would happen to her pension. She indicated that she wants [REDACTED] to work "as the need arises" and that [REDACTED] is to be paid for days worked. She also requested to see the waiver form.
7. 11:18 AM: I responded to Judge Newman with pay rate details, restated that there would be no effect on her pension, and indicated that [REDACTED] could work on an intermittent basis. I explained the process for reporting [REDACTED] hours to HR. I also provided a draft of the waiver form, detailed the additional information that I needed Judge Newman to provide, and provided next steps.
8. 1:27 PM: Judge Newman sent an email requesting that I use a linked vacancy announcement for a JA from the DC Court of Appeals for her recruitment. The link did not work and the announcement was no longer on the DC Court of Appeals site.

9. 2:05 PM: I emailed Judge Newman to let her know that the link was broken. I asked her to confirm that she would like to hire a JA rather than a chambers paralegal. I provided a draft of an updated vacancy announcement with the appropriate duties and requirements for a JA and asked her to review for posting.

10. 9:35 PM: Judge Newman responded inquiring again whether [REDACTED] pension annuity would be affected and whether she would be separately paid for time worked at the court. Judge Newman asked about how [REDACTED] would be paid for hours worked at the court, whether [REDACTED] would be eligible for travel reimbursement, and if there was any additional information the judge needed to know.

Wednesday, May 3, 2023

1. 9:13 AM: I responded to Judge Newman with assurance that, if approved by the AO, [REDACTED] annuity payments will continue uninterrupted and that in addition to her annuity she will also receive a separate payment for her earnings for whatever hours she works for the judge. I further explained the method and timing of payments and notified Judge Newman that [REDACTED] is not eligible for travel reimbursement.

Monday, May 8, 2023

2. 4:22 PM: I spoke with [REDACTED] by phone, returning a voice mail that she left for me at 3:30 PM. [REDACTED] had a number of questions regarding the effect on her pay and benefits of returning as a rehired annuitant. I provided answers to the questions I was able to and promised to follow-up with answers to those questions that required more research. [REDACTED] stated that she would prefer to have all of the answers in writing and said that she would send me an email with all of her questions.

Please let me know if you have any questions.

Thanks,

[REDACTED]

Human Resources

U.S. Court of Appeals for the Federal Circuit

From: Chief Judge Kimberly A. Moore [REDACTED]

Sent: Tuesday, May 9, 2023 10:21 AM

To: [REDACTED]

Subject: HR question

[REDACTED]

Can you please check in with Judge Newman because weeks ago her requests for judicial assistance were approved? Why hasn't this moved forward? As I understand it:

April 19: [REDACTED] resigned from Judge Newman's chambers on April 19, 2023 and asked that there be no further communication between him and Judge Newman. He was assigned to our Clerk's Office where he now works.

Judge Newman requested that she be permitted to bring back her former judicial assistant, [REDACTED] who her chambers claimed was ready and willing to come back. As I understand it, you contacted the AO to determine how to bring back [REDACTED] (a retired annuitant) in a manner which would not diminish her retirement annuity. I agreed to petition the AO to waive the salary set-off that [REDACTED] would face as a reemployed annuitant. This way [REDACTED] would receive her full retirement annuity and get paid for any hours she worked at the court.

April 24: I understand you to have communicated the approval to bring [REDACTED] back to Judge Newman on April 24 including the fact that [REDACTED] will be brought back in a manner which allows her to keep both her full retirement annuity and get paid.

April 27 (9:43 am): I sent Judge Newman an email (copying you) which approved her request to advertise to hire a permanent paralegal/assistant.

Given that her request for temporary assistance was approved 16 days ago (just 5 days after her assistant resigned) and that her request to advertise for a permanent replacement was approved 13 days ago, I am confused about her below claims that either I or the court continue to deprive her of what she refers to as secretarial services.

Can you update me on this process and reach out again to Judge Newman?

With gratitude,

Kimberly Moore

The Honorable Kimberly A. Moore
Chief Judge
U.S. Court of Appeals for the Federal Circuit

From: [REDACTED]
Sent: Monday, May 8, 2023 5:21 PM
To: Chief Judge Kimberly A. Moore [REDACTED]
Subject: Fwd: Governance and Education Travel Report (fka Non-Case Related Travel Report) Report Due May 15

Chief,

See PN's response below.

[REDACTED]

From: Judge Pauline Newman [REDACTED]
Sent: Monday, May 8, 2023 5:11 PM
To: [REDACTED]

Cc: Judge Pauline Newman [REDACTED]

Subject: Re: Governance and Education Travel Report (fka Non-Case Related Travel Report) Report Due May 15

[REDACTED] I do not choose to do secretarial work, whether or not any senior judges are obliged to do so. My JA routinely keeps these records and fills out these forms for my review. It appears that the court chooses to continue to deprive me of routine services.

PN

Sent from my iPhone

On May 8, 2023, at 4:23 PM, [REDACTED] wrote:

Judge Newman,

Almost all the senior judges enter this information in Infoweb themselves and many of them do not have secretarial support. This is a mandatory report required by all judges; only you have your information about your travel. You will need your credentials for [Infoweb](#), and here are the [instructions](#) on how to enter the data. It is a very user-friendly system. Perhaps one of your law clerks could assist you. If your staff has any questions, I'd be happy to answer them.

Best,

[REDACTED]
Chambers of Chief Judge Kimberly A. Moore
U.S. Court of Appeals for the Federal Circuit
717 Madison Place NW
Washington, DC 20439
[REDACTED]

From: Judge Pauline Newman [REDACTED]
Sent: Monday, May 8, 2023 3:40 PM
To: [REDACTED]
Subject: Re: Governance and Education Travel Report (fka Non-Case Related Travel Report) Report Due May 15

[REDACTED] since I don't at present have a JA, by action of the Chief Judge, please advise how the court proposes to assist in handling these reporting requirements.

PN

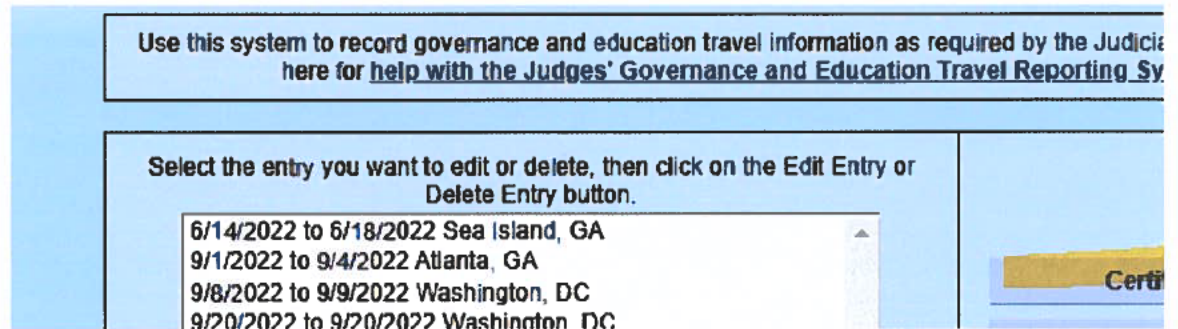
Sent from my iPhone

On May 8, 2023, at 3:09 PM, [REDACTED] wrote:

Good afternoon,

This email is a friendly reminder that the Governance and Education Travel Report (fka Non-Case Related Travel Report) is due **May 15**. This report must be completed even if your judge didn't do any relevant traveling in 2022, which is known as a negative report.

I've reviewed the entries and noticed that some hadn't clicked the **Certify Travel** button. So please be sure to do so by May 15.



Also, if your judge attended our Judicial Conference, it is a reportable item, according to [The Guide to Judiciary Policy](#). Please see the rule below and refer to your judge. Please let me know if you need me to decertify you to make any changes.

§ 270.30 Examples of Governance and Education Travel

1. (a) Governance and Education Travel That **Must Be Reported** (unless the judge is reimbursed in any way for the expenses), includes:

1. (1) Travel related to court governance. For example, travel to:

1. (A) meetings of the Judicial Conference and its committees;
2. (B) circuit judicial conferences or meetings planned by the circuit courts;
3. (C) meetings of circuit judicial councils or their committees;
4. (D) meetings of the circuit courts or their committees;
5. (E) meetings of the district courts or their committees;
6. (F) meetings of bankruptcy judges or bankruptcy judges' committees;
7. (G) meetings held at, sponsored, or organized by the court.

2. (2) Travel to attend educational seminars or programs sponsored by government agencies, universities, and law schools. For example:

1. (A) educational seminars or programs sponsored by the court or another sponsor;
2. (B) meetings sponsored by bar associations or professional societies;
3. (C) participate in moot courts or to lecture or present at conferences;
4. (D) attend sentencing institutes or to visit prisons.

3. (3) Travel made under the auspices of or at the request of the federal government. For example, travel to programs sponsored by:

- the Department of Justice,
- the Department of State,
- the Library of Congress, or
- any other agency of the federal government.

4. (4) Any other travel undertaken in the discharge of the duties of the judge identified with a particular case or cases assigned to the judge.

I will be on travel next week with the court. So if you need me, please email or text me at [REDACTED] and I will get back to you as soon as possible.

Thanks,

[REDACTED]
Chambers of Chief Judge Kimberly A. Moore
U.S. Court of Appeals for the Federal Circuit
717 Madison Place NW
Washington, DC 20439
[REDACTED]

United States Court of Appeals for the Federal Circuit

In re Complaint No. FC-23-90015

* * *

AFFIDAVIT [Affidavit 8]

I, [REDACTED] do hereby swear under oath that the following is true to the best of my knowledge.

1. From the period of December 26, 2016, through May 30, 2023, I served as the appointed chief deputy clerk for the U.S. Court of Appeals for the Federal Circuit. On May 31, 2023, I was designated as acting clerk of court for the U.S. Court of Appeals.
2. As then senior deputy clerk at all times relevant to this affidavit, the circuit clerk has designated me as responsible for directing and managing the activities of the Clerk's Office. Additionally, during the periods relevant to this affidavit, I was concurrently designated by the Federal Circuit Judicial Council to serve as acting circuit executive and clerk of court whenever the circuit executive/clerk of court was out of the office.
3. Between April 20, 2023, and May 17, 2023, I participated in multiple email exchanges with or about Judge Newman. True and accurate copies of these exchanges are attached in full as Exhibits A, B, C, D, E, F. Following these email communications, I contemporaneously forwarded these exchanges to the Special Committee, as well as discussed these matters with the Special Committee.

4. During these exchanges, Judge Newman levied various accusations against me including (1) multiple assertions that I was both acting as counsel for Chief Judge Moore and as her “adversary,” (3) repeated assertions that I was withholding secretarial services from her, (4) multiple allegations about the “illicit removal” of equipment from her chambers, (5) multiple allegations of removal of chambers records, and (6) the making of false statements to both her and her legal counsel.
5. These email exchanges were troubling to me for several reasons. First, it appeared to me that from one email to the next Judge Newman either did not read or did not recall the lengthy prior explanations I provided to her. Second, Judge Newman demonstrated an adversarial approach toward me even after I explained my lack of involvement with aspects of her complaints to me. Third, in an effort to still provide Judge Newman with clarification, I found it necessary to take a firm tone of a nature I have never had to take in my six years of working with Judge Newman at the court. Finally, the hostile nature of Judge Newman’s personal accusations against me stands in sharp contrast to how I have interacted with any of the other 50-or-so federal judges with whom I have worked both in the Federal Circuit and in other federal courts since I began working in the federal judiciary in 2004.
6. From these perseverated accusations against me by Judge Newman, I experienced emotional stress and discomfort, including loss of sleep and

heightened anxiety upon receipt of an email message from her and then attempting to craft a suitable response to her. In addition to my own encounters with Judge Newman, I also provided support and encouragement to other members of court staff who were experiencing similar difficult interactions with Judge Newman. As part of my conversations with members of court staff and the difficulties they were experiencing with her, I requested that staff attempt to engage in conversations with Judge Newman only by email or to bring a second person along if required to go to her chambers.

Judge Newman Chambers Staff

7. On April 20, 2023, I transmitted to Judge Newman and her chambers staff a memorandum from her former paralegal, [REDACTED]. The memorandum included, among other things, details about the location of her chambers files.
8. In response to my email, Judge Newman requested assistance with an opinion she anticipated having ready for processing for release. I advised her of the email address for processing opinions in the Clerk's Office, to which she clarified that she needed assistance with incorporating hard copy edits into her draft opinion and wanted to know "how do [I] envision providing these services on a regular basis." Exhibit A.
9. I explained to Judge Newman that the Clerk's Office could assist with getting her edits by fax but that her law clerks were the only staff with

access to the electronic version and would need to incorporate her edits for final review. Judge Newman responded that this was “secretarial work, not law clerk work.” Exhibit A.

10. Following a second accusation of withholding secretarial services on April 24, 2023, I explained that the service Judge Newman was requesting from me and the Clerk’s Office “would result in the providing of expanded services and support beyond my existing authority” to provide services to any of the other judges of the court. Exhibit B.
11. Notwithstanding my explanation on April 24, 2023 and my third attempt on May 17, 2023, Judge Newman persisted in alleging I “deprived [her] of secretarial services” another time on May 17, 2023. Exhibit D.
12. On April 25, 2023, I spoke by telephone with Judge Newman’s counsel, Greg Dolin, to coordinate electronic service and filing of documents with the court. On the call, Mr. Dolin inquired what could be done to restore services to Judge Newman. I clarified for him on the phone, and again in a follow-up email shortly thereafter, that “Judge Newman has continued and continues to have full access to her chambers materials and the ability to transmit opinions to the Clerk’s Office for issuance” and that I had already clarified this fact with Judge Newman that morning. Exhibit E.
13. Judge Newman replied all to my email to her counsel on April 26, 2023, and accused me of having “withheld from my counsel the information that

you refused to permit filling the paralegal/secretarial position in my chambers, unlike all the other judges.” Exhibit E.

14. I replied all to Judge Newman and her counsel on April 27 recounting the same details I had previously explained to her by email, including my request that she address her staffing concerns with either the Chief Judge or the Judicial Council, not me.
15. For the benefit of her counsel, I explained in the detail the services Judge Newman was being provided by the Clerk’s Office and the efforts I had taken in response to Judge Newman’s concerns. I also clarified for her and her counsel that I had already clarified these points for Judge Newman by email on April 25, 2023.
16. At no point was I involved in any decision concerning the departure of staff from Judge Newman’s chambers. Likewise, during the period at issue, I had no authority to direct the staffing decisions as to Judge Newman’s chambers or any other chambers of the court.

Case Management of the Judicial Complaint

17. On April 21, 2023, the Clerk’s Office received three hand-delivered letters from Mark Chenoweth of the New Civil Liberties Alliance. The letters were addressed to Chief Judge Moore and handed to me by a member of the Clerk’s Office staff upon delivery, upon which I transmitted the letters to the Special Committee.

18. Because the letters did not include either an entry of appearance by counsel or any notation reflecting that Judge Newman was aware of the entry of appearance on her behalf, I emailed Judge Newman on April 22, 2023, for clarification at the direction of the Special Committee. Exhibit B.
19. In response to my email on April 24, 2023, Judge Newman confirmed who was serving as her counsel and then asked me to “please confirm that you are serving as counsel to Judge Moore.” I clarified that I was “not serving as legal counsel to Judge Moore” but rather was serving as “acting clerk” in the absence of the then-clerk. Exhibit B.
20. Without explanation, Judge Newman replied the same day that “it seems clear that you are acting as counsel for Judge Moore, and as adversary to me, a member of the court. Otherwise, why haven’t you assisted me in your role as Clerk? I need secretarial services, that you continue to withhold.” Exhibit B.
21. I responded that her request for additional support was previously addressed by Chief Judge Moore and clarified that she is receiving the same level of service being provided to every other judge. To underscore my point and need to maintain my neutrality in this matter, I “respectfully ask[ed] that [she] direct any additional concerns about the Clerk’s Office’s role and authority to the Chief Judge and/or Judicial Council.” Exhibit B.

22. The next day, Judge Newman wrote back that she “note[d] [my] response on behalf of Judge Moore” and wanted to know my authorization. I declined to respond.
23. Contrary to Judge Newman’s allegation of responding on behalf of Chief Judge Moore, I did not confer with Chief Judge Moore before replying to Judge Newman on April 24, 2023.
24. Due to the sensitive nature of this matter, I continue to serve as the case manager in this case and have coordinated an agreement with Judge Newman’s counsel for them to send electronic filings to the court through me and for me to serve them electronically with filings from the court.

Judge Newman Equipment and File Access

25. On April 24, 2023, Judge Newman emailed me with the subject line “Where is our computer?” and alleging I directed its removal from her chambers. She also asked for my authority to take “my chambers’ equipment.” Exhibit C.
26. Because I did not know what Judge Newman was talking about, I asked for clarification, which she said was the computer at her secretary’s station. I replied that I did not direct such removal and that I would contact our IT staff to address the matter.
27. The next day I sent a lengthy email to Judge Newman apologizing for the confusion about staff movement and the equipment in her chambers. I noted that I directed IT staff to replace the computer in her chambers that

day and that “nothing about the move of this desktop ever hindered, restricted, or interfered with access by either you or your chambers staff to her chambers records” because all records were located on her chambers network file.

28. I further clarified for her that it was “longstanding court policy” that computers are assigned to individuals and not to a specific office and that the assigned computer relocates with the person when they move locations or offices. In other words, court staff followed existing court policy, contrary to Judge Newman’s assertions.
29. Additionally, I confirmed for Judge Newman that her former staff member, [REDACTED], had his access to her chambers records upon his transfer the prior week.
30. On May 15, 2023, Judge Newman emailed Chief Judge Moore and copied all judges requesting the “immediate return of my JA-desk computer, for it contains important records.” Judge Newman again repeated the allegation that the computer was an “illicit removal.” Exhibit D. Because of my prior communications with Judge Newman on this point, Chief Judge Moore forwarded me the exchange and asked me to respond.
31. On May 16, 2023, I responded to Judge Newman as my fourth attempt to address her access to her chambers records. In addition to my repetition of the same facts to her, I added that both I and a member of the IT staff personally inspected [REDACTED]’s desktop and confirmed that he had “no

remaining documents or records from his time in your chambers or records that belong to you.” Exhibit D.

32. In another attempt to help her explain court policy on the relocation of court desktops, I explained to Judge Newman that when her prior assistant left her chambers, that desktop was removed and all files were transferred to her network drive. A new desktop was issued to her chambers when [REDACTED] started two years prior.
33. Again, I noted that “[f]rom my extensive and repeated review of this situation . . . it appears that our staff have again followed this standard policy without exception or differential treatment to you.” I also expressed my objection to Judge Newman’s characterization of the conduct by staff. Exhibit D.
34. Judge Newman replied shortly thereafter and asked me to send someone to her chambers when she arrived to help “find the material that was stored in the computer at the JA desk.” Exhibit D.
35. Later that afternoon, Judge Newman called my office to speak with me. As I was out of the office for the afternoon, someone in my office gave me the message and I asked [REDACTED] in IT to go to chambers to assist Judge Newman locate her files.
36. Around 2:44 p.m., [REDACTED] sent me a message that he had no success with Judge Newman. I called him to discuss what happened. On the call [REDACTED] was audibly upset and bothered and he said it was due to

how Judge Newman behaved and treated him when he was attempting to help her locate her files. I asked [REDACTED] to send me an email summary of what happened, which he did by 3:17 p.m. Exhibit F. Of note, [REDACTED] reported that Judge Newman expressed that "[REDACTED] [sic] stole all of her files. I have no JA. I want my PC and Phone back. No one from my chambers or myself will do the job of an [sic] JA" and Judge Newman wanted the Clerk's Office to assist her.

37. Because of Mr. [REDACTED] experience and Judge Newman's request for Clerk's Office assistance, the next morning I emailed Judge Newman my fifth attempt to explain the circumstances of the computer and her chambers records. Taking a more assertive tone than in my past messages, I criticized Judge Newman for being "agitated, belligerent, and demonstratively angry" with [REDACTED] and for her again levying accusations about staff denying her access to her chambers records. In hopes of resolving the matter with Judge Newman, I even offered to allow either her or her staff to personally inspect Mr. [REDACTED]'s desktop. I concluded my message by asking Judge Newman and her staff to take a more respectful approach toward any future staff that attempt to assist in chambers. Exhibit D.
38. Again missing the three points of my prior communications that (1) there were no chambers records on any desktop, (2) [REDACTED] did not retain access to or possess any of Judge Newman's records, and (3) Judge

Newman and her staff have always had access to the chambers network files, Judge Newman responded that “everything on my chambers computer is the property of my chambers. It does not belong to a departed employee.” Exhibit D.

39. Judge Newman ended her May 17 email to me by noting that [REDACTED] “proposed to teach [her] how to perform secretarial operations on my computer, now that you have deprived me of secretarial services. I declined.” Exhibit D. From my prior May 16 phone call with [REDACTED], I understood that the “secretarial operations” he was attempting to teach her was how to open her Financial Disclosure file so she could prepare her annual filing.

40. Because Judge Newman’s May 17 response continued to disregard my several prior attempts to explain things to her, I declined to respond.

DATED this 31st day of May, 2023.

[REDACTED]

Sworn to and subscribed before me this 31st day of May, 2023.


Notary Public





[Redacted]

From: Judge Pauline Newman
Sent: Friday, April 21, 2023 10:39
To: [Redacted]
Subject: Re: Chambers 801 Transition Memo 4.20.23

That is secretarial work, not law clerk work. My law clerks are performing other as assignments.

Sent from my iPhone

On Apr 21, 2023, at 10:04 AM, [Redacted] wrote:

My apologies as I misunderstood your request.

Is there anyone in chambers today who can receive your edits by fax? If not, one of us can get it and scan it to them. Since your law clerks have access to the electronic file, they would incorporate your edits for your final review. We can then work with one of your law clerks on the transmittal once the edits are incorporated into the electronic version.

Regards,
[Redacted]



[Redacted]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit
[Redacted] | www.ca9c.uscourts.gov

From: Judge Pauline Newman [Redacted]
Sent: Friday, April 21, 2023 9:54
To: [Redacted]
Subject: Re: Chambers 801 Transition Memo 4.20.23

It will be in hard copy with my edits, and I will need to see if in its final form.
Also, I am working from home today.
How do you envision providing these services on a regular basis?

Sent from my iPhone

On Apr 21, 2023, at 8:50 AM, [REDACTED] wrote:

Judge Newman,

You can email it to [REDACTED] and we will upload it into the system for processing.

Regards,
[REDACTED]

<image001.png>

[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED] | www.ca9.uscourts.gov

From: Judge Pauline Newman [REDACTED]
Sent: Friday, April 21, 2023 0:36
To: [REDACTED]
Subject: Re: Chambers 801 Transition Memo 4.20.23

[REDACTED] I expect to have a completed draft of an opinion tomorrow. Who should I send it to, to process for release?

PN

Sent from my iPhone

On Apr 20, 2023, at 4:18 PM, [REDACTED] wrote:

Good afternoon,

Per Chief Judge Moore's April 19, 2023 email, I am transmitting the Chambers 801 Transition Memo that [REDACTED] prepared and submitted to me as final a few minutes ago.

Regards,
[REDACTED]

[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED] | www.ca9.uscourts.gov



[REDACTED]

From: Judge Pauline Newman
Sent: Tuesday, April 25, 2023 0:10
To: [REDACTED]
Subject: Re: Clarification of Counsel Submission

[REDACTED], I note your response on behalf of Judge Moore. What is your authorization?
Judge Newman

Sent from my iPhone

On Apr 24, 2023, at 10:39 AM, [REDACTED] wrote:

Judge Newman,

If they are appearing as your counsel, we need them to enter an appearance in the matter per court rules so they can appear, be served on your behalf, and participate in the pending disability and misconduct matter as outlined in those rules.

Concerning your request for additional support, Chief Judge Moore addressed your request by email last week. The Clerk's Office remains available to provide the service I originally offered to you—assistance with transmitting to the Clerk's Office a final opinion for docketing and issuance—that we provide to all the judges of this court. To be clear, I am not seeking to act adverse to you and remain available to provide any of the existing services and support the Clerk's Office provides to any of the court's judges per our statutory and regulatory authority. However, because your requested service from the Clerk's Office would result in the providing of expanded services and support beyond my existing authority, I cannot do so without the approval and direction of the Chief Judge or Judicial Council.

As such, and so that I can continue to remain neutral in fulfilling my administrative and ministerial duties to you and the other judges of the court, I would respectfully ask that you direct any additional concerns about the Clerk's Office's role and authority to the Chief Judge and/or Judicial Council.

Regards,

[REDACTED]



[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED] | www.ca9c.uscourts.gov

From: Judge Pauline Newman [REDACTED]
Sent: Monday, April 24, 2023 10:04
To: [REDACTED]
Subject: Re: Clarification of Counsel Submission

[REDACTED] there is no litigation; what is the "entry of appearance?"
In addition, it seems clear you are acting as counsel for Judge Moore, and as adversary to me, a member of the court. Otherwise, why haven't you assisted me, in your role as Clerk? I need secretarial services, that you continue to withhold.
PN

Sent from my iPhone

On Apr 24, 2023, at 7:28 AM, [REDACTED] wrote:

Judge Newman,

Thank you for confirming this for me. I will reach out to your counsel this morning about the entry of appearance paperwork.

To clarify, though, I am not serving as legal counsel to Judge Moore. My capacity here is as acting clerk in light of [REDACTED]'s absence.

Regards,

[REDACTED]

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[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED] | www.ca9.uscourts.gov

From: Judge Pauline Newman [REDACTED]
Sent: Monday, April 24, 2023 1:26
To: [REDACTED]
Subject: Re: Clarification of Counsel Submission

To [REDACTED]
Responding to your question, the New Civil Liberties Alliance is serving as my counsel, as stated in the letter from its President and General Counsel Mark Chenowith, to Judge Moore.

Please confirm that you are serving as counsel to Judge Moore.

Pauline Newman

Sent from my iPhone

On Apr 22, 2023, at 3:29 PM, [REDACTED]
[REDACTED] wrote:

Judge Newman,

On Friday, the special committee received a letter from Mark Chenoweth of the New Civil Liberties Alliance in which he states he is your counsel and filing the letter on your behalf. The letter was neither accompanied by an entry of appearance nor included a copy line on the letter indicating that you were aware of such a filing.

Because of the sensitive and confidential nature of this inquiry, the committee asked me to clarify with you whether Mr. Chenoweth is appearing as your counsel in this matter before anything is sent to him. If Mr. Chenoweth is your counsel, I will reach out to him on Monday morning to coordinate without delay his entry of appearance and motion to appear pro hac vice on your behalf.

Regards,

<image001.png>

[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED] | www.ca9.uscourts.gov



[REDACTED]

From: Judge Pauline Newman
Sent: Tuesday, April 25, 2023 11:42
To: [REDACTED]
Subject: Re: Where is our computer?

Follow Up Flag: Follow up
Flag Status: Completed

The disruption to my chambers, the loss of my time, is irremediable. And inexcusable.
Judge Newman

Sent from my iPhone

On Apr 25, 2023, at 10:52 AM, [REDACTED] wrote:

Judge Newman,

I was only speaking about the JA desktop. If there is something missing or wrong with your desktop, I will have someone from IT work with you on locating. We have not made any adjustments to your individual desktop. If you need us to provide you with an updated caption or opinion template, let me know and we will send it promptly.

As I understand it, the decision to relocate [REDACTED] out of chambers came from Judge Moore, per her email to you last week, as part of an ongoing employment dispute matter, of which I am not a party or participant. The subsequent movement of the desktop was standard procedure and not specific to this situation. Now that you have clarified that the device was not replaced, I have spoken with our IT staff and they will be replacing it today with the same access and setup that [REDACTED] had. Because the removed device did not have your chambers records on it as those items are stored on your chambers network drive, at no point did you or your chambers staff lose access to those materials.

Having read the transition memorandum from [REDACTED] sent to you and your chambers, he explained in there where on your network drive he saved various items. Likewise, he has remained available—through a request to me—to assist anyone in your chambers with locating any items you need.

I hope this further clarifies this situation for you.

Respectfully,
[REDACTED]



██████████
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

██████████ www.cafc.uscourts.gov

From: Judge Pauline Newman ██████████
Sent: Tuesday, April 25, 2023 10:31
To: ██████████
Subject: Re: Where is our computer?

Thank you, ██████████ I point out some inaccuracies in your recitation. Yesterday we sought to provide an official caption and some historical material that was not available on my desktop. Also, please explain the authority by which this equipment was removed. The disruption to my chambers, the loss of my valuable time, awaits explanation.
Judge Newman

Sent from my iPhone

On Apr 25, 2023, at 9:46 AM, ██████████ wrote:

Judge Newman,

My apologies for the confusion here about the staff movements and equipment. I spoke with IT staff this morning and a computer will be returned to the JA desk in your chambers, which will have full access to your chambers network drive and all of the same materials previously available to your JA and the rest of your chambers staff. Because all of your chambers materials, drafts, and documents are stored on your chambers network drive and not the local desktop, nothing about the move of this desktop ever hindered, restricted, or interfered with access by either you or your chambers staff to these materials.

Under longstanding court policy, computers are assigned to individuals when they start at the court and not to a specific office. When that person moves offices, the computer moves with the person. This is what happened last week when ██████████ relocated to the fourth floor. I spoke with ██████████ this morning and confirmed that during his time in your chambers he never saved any chambers information on the desktop but always saved everything—your chambers memos, drafts, forms, etc.—on to your chambers network drive. Moreover, I confirmed with IT that ██████████'s access to any of your chambers files was removed upon his transfer last week.

In [REDACTED]'s transition memo that I forwarded to you and your chambers staff last week, [REDACTED] explained where he kept all drafts and materials in your chambers network drive. If you would like him to show you or anyone else in your chambers where items are saved, please let me know. Our IT staff can also assist you with locating these items.

I hope this clarifies this matter for you. Please let me know if I can be of additional assistance in remedying this matter.

Respectfully,

[REDACTED]

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[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED] www.cafc.uscourts.gov

From: Judge Pauline Newman [REDACTED]
Sent: Monday, April 24, 2023 23:19
To: [REDACTED]
Subject: Re: Where is our computer?

[REDACTED]
In your position as (acting) clerk of court, please ascertain who instructed the removal of my chambers equipment.

Judge Newman

Sent from my iPhone

On Apr 24, 2023, at 5:59 PM, [REDACTED]
[REDACTED] wrote:

Judge Newman,

I did not direct that removal and will contact IT to fix the matter.

[REDACTED]
[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED] www.cafc.uscourts.gov

From: Judge Pauline Newman [REDACTED]
Sent: Monday, April 24, 2023 5:03:00 PM

To: [REDACTED]
Subject: RE: Where is our computer?

The computer at the JA/Secretary's station.

From: [REDACTED]
Sent: Monday, April 24, 2023 4:25 PM
To: Judge Pauline Newman [REDACTED]
Subject: RE: Where is our computer?

Judge Newman,

Respectfully, I have no idea what you are talking about as I never gave such an order. What computer is missing?

[REDACTED]

<image001.png>

[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED] www.cafc.uscourts.gov

From: Judge Pauline Newman [REDACTED]
Sent: Monday, April 24, 2023 16:15
To: [REDACTED]
Subject: Where is our computer?

[REDACTED]
My office computer is not here; I understand it was removed at your instructions. Please restore it immediately – I need the drafts, forms, and information present on that machine. Please also explain your authority to take my chambers' equipment.

Judge Newman



[REDACTED]

From: Judge Pauline Newman
Sent: Wednesday, May 17, 2023 9:13
To: [REDACTED]
Subject: Re: Please return my computer

[REDACTED] everything on my chambers computer is the property of my chambers. It does not belong to a departed employee.

As for [REDACTED]'s visit yesterday, he proposed to teach me how to perform secretarial operations on my computer, now that you have deprived me of secretarial services. I declined.

Judge Newman.

Sent from my iPhone

On May 17, 2023, at 8:51 AM, [REDACTED] wrote:

Judge Newman,

Yesterday, I provided a fourth attempt to explain the circumstances of the computer for at your judicial assistant's desk and that there are no records of yours on [REDACTED]'s computer. Today is my fifth attempt.

In response to my email yesterday, you asked for someone to come to your chambers when you got in to show you how to locate the files that you needed. Shortly after you called my office to say you were in, I asked [REDACTED]—head of our help desk and someone who has provided technical support to you for many years—to go to your chambers. [REDACTED] brought along [REDACTED] from our IT staff to also assist. Because no one in the Clerk's Office has the ability to access your chambers network files, only a member of our IT staff or your chambers staff can actually assist with locating them.

Shortly after leaving your chambers, [REDACTED] called me to report the following. He shared that you were looking for the files to complete your annual financial disclosure and to access your travel documents, which are stored on your chambers Y drive. [REDACTED] has assisted with locating these files for you annually for the past few years and assured me he knew where they were. When he attempted to assist you yesterday, you became agitated, belligerent, and demonstratively angry with him. In short, you refused to let him help you. Because you did not want him touching your computer, he offered to show your law clerks where to find those files and to set up the access to those files on the desktop at your judicial assistant's desk. You again refused. I understand you also said that this was work that the Clerk's Office should be doing, accused your former employee [REDACTED] of stealing your files, and you alleged that a PC and a phone were also stolen from you. He left your office out of concern that he would further upset you. To say that

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Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

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From: Judge Pauline Newman
Sent: Tuesday, May 16, 2023 8:44
To:
Cc: Chief Judge Kimberly A. Moore
Subject: Re: Please return my computer

I will be in chambers later this morning. Please send someone to find the material that was stored in the computer at the JA desk. This includes important records.
Judge Newman

Sent from my iPhone

On May 16, 2023, at 8:18 AM, wrote:

Judge Newman,

Following receipt of Chief Judge Moore's below email yesterday afternoon, I personally inspected's desktop and found no remaining documents or records from his time in your chambers or records that belong to you. Additionally, I requested a member of ITO staff also inspect his desktop and the staff member confirmed, as I had, that there were no remaining documents or records of yours on his desktop. As part of this review, I also confirmed that has no access to your network drive.

In reviewing my records, I have previously addressed this matter with you by email twice beginning on April 24 and continuing through April 25, wherein I explained that the desktops in every chambers are assigned to the individual and not the location. I confirmed that in this instance our IT staff followed long-standing policy and moved's desktop with him, and I confirmed with both and IT then—and again today—that any documents concerning your chambers were saved to your chambers network drive at the time of his departure from your

chambers. [REDACTED]'s transition memo to you on April 20, 2023 explained the location of various item as well. For your reference, I am reattaching our two email exchanges from April 24-April 25 and the transition memo from April 20. Our IT staff remain available to assist you with locating any records you may need on your chambers network drive.

On April 27, 2023, we had a third email exchange concerning the issue of a desktop in your chambers, your ability to access files, and an explanation of how we handle desktops and file access when staff change desks. Your legal counsel were also copied on this exchange, and for your reference, I am also attaching a copy of that exchange for your awareness.

Finally, I will add to this conversation that when [REDACTED] left your chambers and upon [REDACTED]'s arrival two years ago, our IT staff removed her desktop from your chambers, confirmed that any files she had were stored on your network drive, and then issued [REDACTED] a new desktop which was in the same format as the desktop currently in your chambers. [REDACTED]'s assigned desktop was then wiped and prepared for issuance to a new staff member.

I understand that you may not have been aware of this policy, but it nonetheless is and has been our policy for all chambers and court staff for some time. From my extensive and repeated review of this situation here, it appears that our staff have again followed this standard policy without exception or differential treatment to you. Respectfully, your continued characterization that the removal of the desktop was "illicit" is contrary to years of court operational policy and practice—including the handling of equipment with prior departures from your chambers—and unfairly maligns the staff of this court.

I hope this clarifies this matter for you.

Regards,
[REDACTED]

[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED] | www.ca9c.uscourts.gov

From: Chief Judge Kimberly A. Moore [REDACTED]
Sent: Monday, May 15, 2023 15:05
To: [REDACTED]
Cc: Judge Pauline Newman [REDACTED]
Subject: FW: Please return my computer

[REDACTED]

I believe you have had several communications with Judge Newman over [REDACTED]'s computer. Can you please respond to her concerns expressed below?

Thank you,
Kimberly Moore

Kimberly A. Moore
Chief Judge
U.S. Court of Appeals for the Federal Circuit

From: Judge Pauline Newman [REDACTED]
Sent: Monday, May 15, 2023 10:55 AM
To: Chief Judge Kimberly A. Moore [REDACTED]
Cc: All Judges [REDACTED]
Subject: Please return my computer

To Judge Moore:
Please instruct the immediate return of my JA-desk computer, for it contains important records. The computer that was eventually returned, after the illicit removal of this and other equipment from my chambers, is blank.
Judge Newman



From: [REDACTED]
Sent: Thursday, April 27, 2023 8:23
To: Judge Pauline Newman
Cc: Greg.Dolin@ncla.legal; mark.chenoweth@ncla.legal
Subject: RE: CONFIDENTIAL: Follow-up

Judge Newman,

Respectfully, I have not withheld any information from your counsel and stand by what I stated in the below email. As I previously explained to you by email on April 24, 2023, your concerns about staffing for your chambers need to be addressed to the Judicial Council and not me. I was not involved in the decision concerning the removal of staff from your chambers or the question of whether to fill the vacancy. Your request for expansion of services by the Clerk's Office—namely direct secretarial support and assistance with editing and preparing opinions—is outside of the scope of our authority or services we provide to any other judge of this court. Accordingly, I promptly referred your request to Chief Judge Moore, who responded to you the same day. Absent a contrary direction from either the Chief Judge or the Judicial Council, I cannot proceed and so again, I request that you direct your concerns to them.

The Clerk's Office remains available to provide the same services to you that we provide to any other chambers, which we have done so since the beginning of this matter. Specifically, we have continued to provide you with IT support and assistance; full access to existing communication and network systems; and the processing of judicial directions from you and your chambers, including promptly issuing an opinion on your behalf earlier this week. Once you alerted me to the issue of a removed desktop from your chambers, I attempted to clarify for you what happened; explained that the movement of the desktop from your chambers was standard policy when a staff member changes desks; explained that even with the movement of the desktop there was no chambers information on the device as all of your chambers records were saved to and available on your private chambers network drive; and directed the prompt restoration of a desktop to your chambers, which has since happened. I explained this all to you over several email exchanges ending on April 25, 2023.

You have my consent to share our several email exchanges with your counsel.

Regards,

[REDACTED]



[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED] | www.ca9c.uscourts.gov

From: Judge Pauline Newman [REDACTED]
Sent: Wednesday, April 26, 2023 17:40

To: [REDACTED]
Cc: Greg.Dolin@ncla.legal; mark.chenoweth@ncla.legal
Subject: Re: CONFIDENTIAL: Follow-up

[REDACTED] you have withheld from my counsel the information that you refused to permit filling the paralegal/secretarial position in my chambers, unlike all the other judges. My judicial activity is highly prejudiced.

Judge Newman

Sent from my iPhone

On Apr 25, 2023, at 10:52 AM, [REDACTED] wrote:

Mr. Dolin,

Thank you for speaking with me by phone moments ago.

Appearance and Admission. Since my earlier message to Judge Newman, the Judicial Council has waived the need for formal entry of appearance. Because you clarified that you are now lead counsel on this matter and a member of the Federal Circuit bar, this is moot anyway. We do not require any separate filing on this point.

Service and Filing. In order to expedite the receipt by you and the Judicial Council of all matters and avoid the need for paper delivery and service, we agreed to the following process.

1. If needed, any future filings with the judicial council on this matter can be emailed to me at this address. Please send anything in PDF format encrypted using the same password we agreed to by telephone.
2. I will serve any orders and items from the judicial council or the special committee to you, Mr. Chenoweth, and Judge Newman by email in the same format, again using the same password.

Copy of Current Orders. I will transmit by email to you today all orders already entered in this matter. The files will be encrypted with the same password.

Access to Court Resources. While on the phone, you asked for clarification on Judge Newman's ability to access her chambers materials and issue opinions. I clarified that Judge Newman has continued and continues to have full access to her chambers materials and the ability to transmit opinions to the Clerk's Office for issuance. I noted that I separately clarified this issue for Judge Newman by email earlier today. The Clerk's Office remains available to provide the same technical

assistance and support for Judge Newman that we currently provide to all of the other judges of the court.

Please let me know if I can clarify anything else. My direct dial and mobile number are below as well if you need to reach me.

Regards,

[REDACTED]



[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED]

www.ca9c.uscourts.gov



[REDACTED]

From: [REDACTED]
Sent: Tuesday, May 16, 2023 15:18
To: [REDACTED]
Subject: RE: Judge Newman's behavior

Thanks, [REDACTED]. I'll let you know if she changes her mind.

[REDACTED]



[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED] www.ca9c.uscourts.gov

From: [REDACTED]
Sent: Tuesday, May 16, 2023 15:17
To: [REDACTED]
Subject: Judge Newman's behavior

Hello [REDACTED],

[REDACTED] and I went up to Judge Newman at 2:35PM on 5/16/2023. I explained to Judge Newman that I was here to help with locating some files. She said the files for financial disclosures and travel documents were missing. I asked if I could show her the location of the files; she refused.

She said: [REDACTED] stole all of her files. I have no JA. I want my PC and Phone back. No one from my chambers or myself will do the job of an JA. She then requested assistance from the Clerk's Office.

Thank you,
[REDACTED]

My name is [REDACTED]. I have worked in the Clerk's Office of the United States Court of Appeals for the Federal Circuit for seven years, and I have served as Court Services Coordinator since March 2021. Before that, I served as Legal Specialist and in other positions within the Clerk's Office. In these capacities, I have served as a courtroom deputy, and in my most recent position I have been responsible for coordinating courtroom and argument logistics. Among other tasks, I greet judges and make certain they have everything that they need for argument. I have interacted with Judge Newman routinely on a monthly basis. The facts in this affidavit come from my own personal observations to the best of my recollection.

1. When the court decided to postpone in-person oral arguments due to the COVID-19 pandemic, I helped prepare Judge Newman and all other judges for telephonic arguments. During this period, from March 2020 to August 2021, we frequently experienced delays connecting Judge Newman to the telephonic arguments. Judges provided both primary and backup phone number, but there were several instances when we were not able to reach Judge Newman at either number she provided. In those instances, we contacted the Information Technology Office, and after their support staff reached out to Judge Newman we were only then able to connect her for argument. These connection delays were significantly more common for Judge Newman than other judges and would occasionally delay the argument start time by several minutes, and in some cases more than ten minutes.

2. I also recall spending considerably more time preparing Judge Newman for the transition to telephonic and video arguments than any of the other judges. Of the three orientation sessions that I scheduled with Judge Newman and that I lead, each took around 45 minutes to an hour. For comparison, sessions with other judges averaged 15-20 minutes and were often conducted in a group of several judges. While judges frequently had questions, Judge Newman's questions would often be premature (i.e., questions that would have been answered in the normal course of the orientation) or occasionally repetitive. Many of the questions I would receive from other judges in these settings centered on how these new procedures would impact Judge Newman, and in at least two circumstances I scheduled orientations for other judges to assist specifically in preparing them for panels they served on with Judge Newman.

3. In one orientation session I held with Judge Newman about nine-twelve months ago, which I expected would take no more than 15 to 20 minutes, the session lasted around one hour. The bulk of the time was not spent on the technical procedures, but instead on an unrelated issue involving our system-generated final calendar that I had not caught. I told Judge Newman that I would correct the calendar and explained to her how the issue arose. She was suspicious and confused

and struggled to comprehend how the error occurred. She seemed distrustful of my answers and repeatedly asked whether I needed to consult with others despite my assurances that I was aware of how the issue arose and that I would be the one responsible for taking care of correction. In my view, this conversation did not require more than five minutes, so I was surprised that it took at least 20 minutes before she seemed satisfied that the issue would be resolved.

4. In my capacity as a courtroom deputy, the last few times I have witnessed Judge Newman on the bench I have noticed that she does not ask as many questions as in the past. She has also not appeared as attentive about presiding and keeping advocates to their scheduled argument time as she was even just before the pandemic. I am aware that Judge Newman uses a real-time transcription service so she can follow what is said at oral argument, and I have wondered if this has contributed to her lack of active participation. Judge Newman has historically let lawyers go longer than their allotted time, but the last few times I have served as deputy while she presided Judge Newman did not seem to be cognizant of the time, and the lawyers continued to speak until they self-stopped. She no longer consistently cut them off or managed the time. She seemed content to let them continue for as long as they wanted.

5. In my interactions with Judge Newman, the incident that concerned me the most occurred about 12-18 months ago when I witnessed her being escorted by a Court Security Officer from the public elevator banks to the courtroom. I immediately thought this was unusual because Judge Newman and other judges always arrive at the antechambers to the courtrooms using the judges' elevators to avoid public interaction, and I had seen other judges using those elevators that day. I walked to the end of the hallway to greet Judge Newman. She seemed lost and confused, like she wasn't fully there. I walked with her down the hallway toward the courtroom antechamber. After we walked the short distance from the elevators to the antechamber, she needed to sit for more than a minute until she could gather the energy to stand so I could then escort her inside for robing.

I swear and affirm under penalty of perjury that the foregoing is true and correct.

_____/s/ [Redacted Signature]

Sworn to and subscribed before me this 9th day of May, 2023

District of Columbia

Signed and sworn to (or affirmed) before me on 5/9/23 by [Redacted Name]
Date Name(s) of Individual(s) making statement

Katie Hempill

Katie Hempill
Signature of Notarial Officer

Office Administrator
Title of Office

My Commission Expires: 4/30/2026

Seal

2



AFFIDAVIT OF [REDACTED] [Affidavit 10]

My name is [REDACTED] and I work in the Office of the General Counsel of the United States Court of Appeals for the Federal Circuit as a Technical Assistant. Since September 2019, I have also served as the court's Director of Workplace Relations (DWR). In that role, I have assisted Judge Pauline Newman's former Judicial Assistant, [REDACTED] with certain Employment Dispute Resolution (EDR) matters relating to her chambers. The facts in this affidavit come from my own personal observations to the best of my recollection.*

1. Starting in early March 2023 and continuing over the subsequent weeks, [REDACTED] raised concerns to me about working in Judge Newman's chambers. Specifically, he described another chambers staff member, [REDACTED] as difficult to work with and described Judge Newman's lack of responsiveness in addressing the issues. At that time, [REDACTED] did not want to pursue a formal process under the EDR Plan but instead hoped for a more informal resolution and return to "normal" in chambers. One of the issues [REDACTED] mentioned in our earliest conversation was that [REDACTED] called him at 3am, asking for a 6am wake-up call. He asked for help in preventing additional after hours calls.
2. After our initial conversation and follow-up meetings, [REDACTED] gave me permission to talk to Chief Judge Moore about the situation, which I did throughout the process. The EDR Plan requires that judges "must take appropriate action when they learn of reliable information of wrongful conduct," Plan § IV.B.1. Accordingly, I understand that Chief Judge Moore attempted to address the concern about the after-hours phone calls with [REDACTED]
3. On April 5, 2023, Chief Judge Moore called me because she was concerned about an email exchange with Judge Newman, in which the Chief emailed Judge Newman, using [REDACTED] name as the subject line, to inform Judge Newman about the after-hours phone calls and to ensure that the uncomfortable situation with [REDACTED] does not continue. The Chief told me that Judge Newman directed her response to all judges and chambers' staff, rather than only to Chief Judge Moore. Because the email referenced an EDR matter and included the names of individuals involved, I was concerned that the distribution of that email to such a broader audience breached the confidentiality provision of the EDR Plan,† and I

* I have an obligation under the EDR Plan to maintain confidentiality and share information only to the extent necessary. [REDACTED] has waived that confidentiality as it concerns our interactions.

† The EDR Plan states that "[a]ll individuals involved in the processes under this Plan must protect the confidentiality of the allegations of wrongful conduct.

shared that concern with Chief Judge Moore. I asked if it was possible to claw back the email in an effort to mitigate the breach and limit the number of individuals who saw the confidential information about the informal EDR matter. I understand that the Chief and ITO were able to do that, though I do not know how many judges or chambers staff viewed the email before it was clawed back. I subsequently saw the email exchange in question.

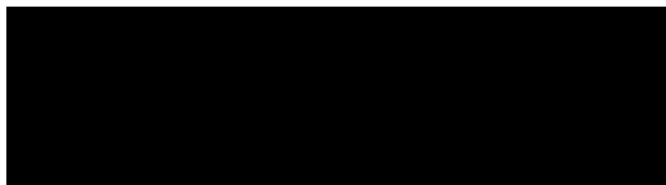
4. On April 10, 2023, with no resolution to [REDACTED] concerns in place, I was asked to join Chief Judge Moore in her chambers to call [REDACTED] in an attempt to informally resolve the matter. [REDACTED] asked and was granted permission to record our phone call. Chief Judge Moore explained the narrow reason for the call was to address the concerns about the after-hours phone calls and asked [REDACTED] if she was willing to refrain from making them in order to resolve this matter. [REDACTED] did not agree to that, saying she would need to think about it, and could not give a time frame to provide a response. Chief Judge Moore then asked [REDACTED] if she was willing to refrain from making after-hours calls to [REDACTED] just for that day, and [REDACTED] again did not agree, repeating that she would have to think about it. Since that call, I have not received any response to the request to refrain from after-hours phone calls from [REDACTED] or her supervisor Judge Newman, nor am I aware of any response from [REDACTED] or Judge Newman to others or any agreement concerning the same.
5. On April 13, 2023, with no resolution to [REDACTED] concerns in place, [REDACTED] submitted to me a Request for Assisted Resolution under EDR Plan § IV.C.2. He submitted an Appendix to his Request the next day. The Request and Appendix allege various wrongful conduct about conduct in chambers under Judge Newman's supervision. Pursuant to EDR Plan § IV.C.2.b, I immediately shared the Request with Chief Judge Moore.
6. On April 14, 2023, Chief Judge Moore copied me on an email to Judge Newman, which provided notice to Judge Newman about the Request for Assisted Resolution, as well as Chief Judge Moore's decision to grant [REDACTED] request for interim relief, pursuant to EDR Plan § IV.B.4, by moving [REDACTED] workstation outside of chambers.
7. On April 18, 2023, I emailed Judge Newman about the Request for Assisted Resolution, offering to facilitate a discussion to address and hopefully resolve the concerns. As of the date of this affidavit, I have not received any response to my

Information will be shared only to the extent necessary and only with those whose involvement is necessary to address the situation." Plan § IV.B.1.

email or the Request for Assisted Resolution, nor am I aware of any response to the Request or associated communications.

8. In the morning of April 19, 2023, [REDACTED] came to my office immediately after a phone call he had with Judge Newman. He relayed to me that Judge Newman told him that unless he moves his workstation back to chambers by 11am, she would accept his resignation.
9. I immediately asked for and received a meeting with Chief Judge Moore and [REDACTED] Judge Prost and Judge Taranto were also in attendance during our meeting. [REDACTED] was visibly emotional when we walked into the Chief's chambers and needed a moment to gather his thoughts. The Chief told [REDACTED] at that meeting that she would grant his request to continue his employment at the court and she would make other work available to him. The Chief later forwarded to me an email she sent to Judge Newman explaining that [REDACTED] is "no longer an employee of the Newman chambers."
10. In several meetings I had with [REDACTED] over the course of many weeks, [REDACTED] discussed the toll that this entire experience was taking on his physical and mental well-being, including seeking help from medical professionals.
11. The Request for Assisted Resolution remains pending as of the date of this affidavit.

I swear and affirm under penalty of perjury that the foregoing is true and correct.



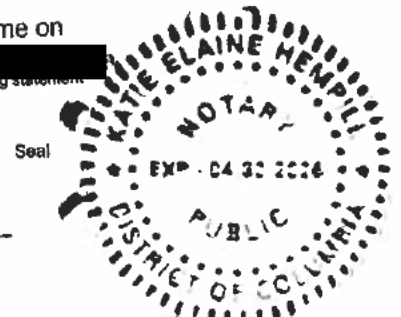
Sworn to and subscribed before me this 18th day of June, 2023

1st Katie Henpille
District of Columbia

Signed and sworn to (or affirmed) before me on
6/1/23 by [REDACTED]
Date Name(s) of individual(s) making statement

Katie Henpille
Signature of Notarial Officer
Office Administrator
Title of Office

Commission Expires: 4/30/26



AFFIDAVIT OF [REDACTED] [Affidavit 11]

1. My name is [REDACTED] and I work as a law clerk to the Honorable Pauline Newman and have been so employed since November 21, 2022. The facts in this affidavit come from my own personal observations to the best of my recollection.
2. In early March 2023, Judge Newman disclosed to me and other members of chambers that [REDACTED]. Judge Newman's paralegal, [REDACTED] [REDACTED], confronted Judge Newman about the inappropriateness of such disclosures at the meeting. It is my understanding that [REDACTED] then informed the Chief Judge, who visited chambers the next day to speak with everyone, including Judge Newman, about the incident.
3. My experience as a clerk has changed dramatically since these events.
4. I was subsequently informed by Judge Newman and her [REDACTED] law clerk, [REDACTED] [REDACTED], to no longer include [REDACTED] on communications because he could not be trusted.
5. At some point thereafter (but before it was reported in the media and later confirmed by the court) it became known and discussed in chambers that Judge Newman was the subject of a formal investigation.
6. Judge Newman and the other chambers staff were informed that I was uncomfortable working on Judge Newman's defense in the investigation, which is personal to Judge Newman.
7. I also found it necessary to telework more frequently to remove myself from the drama, politics, and stress surrounding these events in chambers.
8. It was my understanding that other law clerks were assisting Judge Newman in her defense of these proceedings. On one occasion, I was asked to do research about Judge Newman's dissents. I was told that the research was in preparation for a speech by Judge Linn. I took a minor role at the beginning of the assignment. The assignment was taken over by [REDACTED]. Judge Newman later mentioned that the research would work well as part of her defense.
9. I also became aware of a workplace dispute between [REDACTED] and [REDACTED] when Judge Newman forwarded emails about that dispute to all judges and all law clerks at the court.

10. On April 18, 2023, ██████████ requested that all of Judge Newman's law clerks attend an in-person meeting in chambers.
11. After I learned that the meeting would concern ██████████ but before the meeting started, I informed Judge Newman and the other clerks that I would like to be loaned out to another chambers and suggested that I should not be present at the meeting.
12. At that point, Judge Newman employed me to attend the meeting, communicating that my opinion was needed. I felt uncomfortable but attended the meeting anyway.
13. At that meeting, Judge Newman said that she was not happy that ██████████ had asked the Chief to place him outside of chambers. Judge Newman asked her law clerks if we could handle ██████████'s responsibilities without him. We all agreed that the clerks could handle those responsibilities.
14. At that point in the meeting, I informed Judge Newman that working in her chambers was hurting my ability to complete my work, taking a toll on my mental health, and harming my relationships at the court. I then reiterated that I would like to be loaned out to another judge. In response, Judge Newman indicated she would not let me work for another judge because the optics wouldn't look good for her given the current investigation. Judge Newman then told me that my options were to stay or resign.
15. At that point in the meeting, ██████████ interjected on my behalf in support of my request to be loaned out to another chambers and possibly even another court, but Judge Newman was not receptive to the idea.
16. I informed Judge Newman that I only had two pending cases assigned to me. She responded that I could assist her with research projects, but I told her that I took the position to be a law clerk and not a research assistant. I also reiterated that I would still feel uncomfortable given my proximity and potential exposure to matters concerning the investigation.
17. The next day, April 19, 2023, I brought my concerns to the Chief and indicated that I could no longer work in this environment and requested to be moved to another chambers.

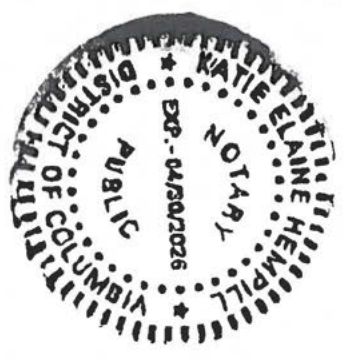
I swear and affirm under penalty of perjury that the foregoing is true and correct.

____/s/



Sworn to and subscribed before me this 19 day of April, 2022

____/s/ Katie E. Herzill



United States Court of Appeals for the Federal Circuit

In re Complaint No. FC-23-90015

* * *

AFFIDAVIT [Affidavit 12]

I, [REDACTED] do hereby swear under oath that the following is true to the best of my knowledge.

1. From the period of December 26, 2016, through May 30, 2023, I served as the appointed chief deputy clerk for the U.S. Court of Appeals for the Federal Circuit. On May 31, 2023, I was designated as acting clerk of court for the U.S. Court of Appeals.
2. As then senior deputy clerk at all times relevant to this affidavit, the circuit clerk has designated me as his primary custodian of the court's records and papers pursuant to Federal Rule of Appellate Procedure 45(d), which includes the data and information stored within the court's electronic filing system (CM/ECF).
3. Data from CM/ECF can be retrieved in several ways for purposes of performing data analysis, including through formatted reports and through raw data extraction.
4. The Clerk's Office uses Microsoft SQL Server Reporting Services (SSRS) to prepare regular internal reports, including monthly reports for Federal Circuit judges including information about the status of their cases and overall internal statistical information.

5. The Clerk's Office also uses DbVisualizer to retrieve the raw data from CM/ECF that supports the formatted data on the SSRS reports.
6. The results of such internal data retrieval and statistical information is uniquely available to the Clerk's Office and the Federal Circuit judges. Aspects of this data are included in public reports we make available on the court's website, as well as in response to public information requests received by the court. However, any publicly released or available data necessary excludes much judge-specific information and, as such, is neither a complete nor fully accurate representation of the work of the court.
7. For example, when either a panel or the court designates an opinion as "per curiam," the Clerk's Office does not publicly disclose the authorship of the opinion on its website. Internally, though, the Clerk's Office counts and reports the authorship of per curiam opinions in its monthly reports provided to the Federal Circuit judges. As a result, a member of the public seeking to calculate authorship totals based on information from our website will report an undercounting of the opinions authored by any particular judge or judges.
8. Concerning the calculation of authorship time, a member of the public can retrieve the public docket of any case through the judiciary's PACER website. This public docket will provide the opening date of the case and the judgment and opinion issuance date of the case, which someone can

use to determine the amount of time it took for a case to be decided.

However, the public docket does not fully disclose information that may unavoidably increase the time it takes for a case to be decided, thus inaccurately inflating calculations for how long a judge takes to issue an opinion.

9. Instead, the internal Clerk's Office-produced reports provide the most accurate accounting of the time for an authoring judge to issue an opinion. The Clerk's Office calculations exclude case stays, cases where rebriefing or supplemental briefing occurs, and cases where authorship changes during the deliberative and authoring period. Therefore, the Clerk's Office numbers, which are calculated directly from the raw data, provide a more accurate calculation of opinion issuance time.
10. Additionally, any calculation of opinion issuance time must only run from when the case authorship is assigned and exclude all prior periods of the case. Before authorship is assigned in CM/ECF and the case is submitted to the panel for a decision, the authoring judge has neither responsibility for writing the decision nor control over the progression of the case.

Case Statistical Information

11. The following memorializes statistical data and information previously provided to the Special Committee during the course of their investigation.

12. Because I do not have access to the underlying raw data in CM/ECF, [REDACTED] Quality Management Supervisor and CM/ECF Administrator, assisted me in performing the following data retrieval and calculations. For any data retrieval I could not accomplish on my own, I personally observed [REDACTED] perform the data retrieval and confirmed the search parameters and results with him at the time.
13. I reaffirm under penalty of perjury the contents of my April 6, 2023 declaration with the following correction, including the methods used to extract the raw data from CM/ECF through DbVisualizer: Paragraph 17 should reflect that Judge Newman's average time from authorship assignment to opinion issuance of 198.75 days was **2.73** not 2.46 standard deviations from the remaining active judge participation mean.
14. From October 1, 2020, through September 30, 2021, Judge Newman authored 9 majority opinions. If her concurrences and dissents are included, she authored 25 opinions. This information was retrieved from the Terminations Report from SSRS (Exhibit A) and filtered to include precedential and nonprecedential opinions issued during the period. Information Column 14 includes information about which, if any, judge wrote an opinion separate from the majority. Judge Newman's code is "PN."
15. From October 1, 2020, through September 30, 2021, the remaining judges who were in active service during this entire period authored an average

- of 42 majority opinions. If additional opinions, such as concurrences and dissents, are included, the average for this period is 44.
16. From October 1, 2020, through September 30, 2021, the next closest judge to Judge Newman had an average time of 143.2 days from assignment to issuance. This judge authored 40 majority opinions and an additional four items, for a total of 44 authorships.
 17. From October 1, 2021, through March 24, 2023, Judge Newman authored 10 majority opinions. If her concurrences and dissents are included, she authored 28 opinions. This information was retrieved from the Terminations Report from SSRS (Exhibit B) and filtered to include only cases where Judge Newman authored a separate opinion from the court's opinion. Information Column 14 includes information about which, if any, judge wrote an opinion separate from the majority. Judge Newman's code is "PN."
 18. From October 1, 2021, through March 24, 2023, the remaining judges who were in active service during this entire period authored an average of 58 majority opinions. If additional opinions, such as concurrences and dissents, are included, the average for this period is 61.
 19. From October 1, 2021, through March 24, 2023, the next closest judge to Judge Newman had an average time of 106 days from assignment to issuance. This judge authored 42 majority opinions and an additional 12 items, for a total of 55 authorships.

20. From October 1, 2021, through March 24, 2023, 616 majority opinions were issued, with 195 (or 31.6%) of the opinions issued per curiam. Only one of the per curiam opinions was authored by Judge Newman. This information was retrieved from DbVisualizer using function *cafc_rpt_judges_assigned_opinion_workload* with date parameters October 1, 2020, through March 24, 2023; the results were filtered to show only Judge Newman's authorships "Newman" and excluded non-merits cases including miscellaneous cases, cases then-still pending (*disp_date = null*), and Rule 36 dispositions (*aopntype = 7*). Cases with *aopntype = 4* or *5* are designated as per curiam. The information from DbVisualizer was copied into Excel to be in a readable format (Exhibit A). The information from DbVisualizer for all curiam opinions with authoring judges redacted was copied into Excel to be in a readable format (Exhibit B).
21. From May 1, 2022, through April 30, 2023, Judge Newman participated in 65 cases. This information was retrieved from the Case Participations report from SSRS (Exhibit E). The underlying cases supporting this calculation were retrieved from DbVisualizer using function *cafc_rpt_judges_case_participations* with date parameters May 1, 2022 through April 30, 2023; the results were filtered to show only Judge Newman's case participations "PN" and for argued cases only. The information from DbVisualizer was copied into Excel to be in a readable format (Exhibit D).

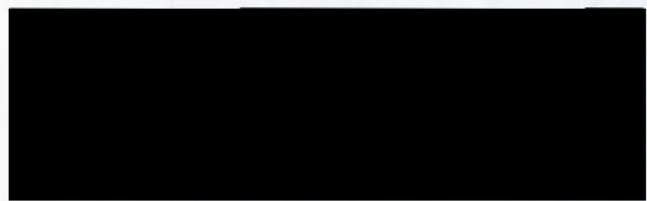
22. From May 1, 2022, through April 30, 2023, the average participation for the other active judges who sat for that same period was 129.1 cases (Exhibit A).¹ Judge Newman's participation was 3.2 deviations from the remaining active judge participation mean.

Case Assignment Information

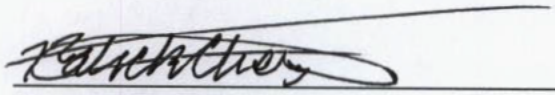
23. Judge Newman last served on a motions panel in January 2021.

I declare and affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 31st day of May, 2023.



Sworn to and subscribed before me this 31st day of May, 2023.


Notary Public



¹ Because Judge Stark joined the court during this period, his participation numbers are excluded from the active judge data.

*Exhibits A, B, C, D, E, and F
have been redacted in their entirety for confidentiality purposes.*

United States Court of Appeals for the Federal Circuit

In re Complaint No. FC-23-90015

* * *

DECLARATION [Affidavit 13]

I, [REDACTED], declare from my personal knowledge that the following is true.

1. From the period of December 26, 2016, through the date of this declaration, I have served as the appointed chief deputy clerk for the U.S. Court of Appeals for the Federal Circuit.
2. As the senior deputy clerk, the circuit clerk has designated me as his primary custodian of the court's records and papers pursuant to Federal Rule of Appellate Procedure 45(d), which includes the data and information stored within the court's electronic filing system (CM/ECF).
3. Data from the CM/ECF can be retrieved in several ways for purposes of performing data analysis, including through formatted reports and through raw data extractions.
4. The Clerk's Office uses Microsoft SQL Server Reporting Services (SSRS) to prepare regular internal reports, including monthly reports for Federal Circuit judges including information about the status of their cases and overall internal statistical information.
5. The Clerk's Office also uses DbVisualizer to retrieve the raw data from CM/ECF that supports the formatted data on the SSRS reports.

6. On March 24, 2023, the Chief Judge provided me with an excerpt of the complaint in this case which contained certain statistical information concerning judge participation and assignments. I was asked to review the court's records as to the statistical information in the complaint and to provide an independent review to the special committee.
7. Because I do not have access to the underlying raw data in CM/ECF, [REDACTED] [REDACTED] Quality Management Supervisor and CM/ECF Administrator, assisted me in compiling and reviewing the reports and data. For any data retrieval I could not accomplish on my own, I personally observed [REDACTED] perform the data retrieval and confirmed the search parameters with him at the time.

Judge Newman's Case Participation from June 1, 2022, through March 24, 2023

8. From June 1, 2022, through March 24, 2023, Judge Newman participated in 60 merits cases. This information was retrieved from the Case Participations report from SSRS (Exhibit A). The underlying cases supporting this calculation were retrieved from DbVisualizer using function *cafc_rpt_judges_case_participations* with date parameters June 1, 2022 through March 24, 2023; the results were filtered to show only Judge Newman's case participations "PN" and for argued cases only. The information from DbVisualizer was copied into Excel to be in a readable format (Exhibit B).

9. From June 1, 2022, through March 24, 2023, the remaining active judges participated in an average of 103 cases, with a standard deviation of 13.72. (Exhibit A). Judge Newman's participation in 60 cases was 3.14 standard deviations from the remaining active judge participation mean.¹

Judge Newman's Opinion Authorship from October 1, 2020, through September 30, 2021

10. From October 1, 2020, through September 30, 2021, Judge Newman authored 9 majority opinions. The next closest judge authored 33 majority opinions. This information was retrieved from the Judges' Assigned Opinion Workload report from SSRS (Exhibit C). The underlying cases supporting this calculation were retrieved from DbVisualizer using function *cafc_rpt_judges_assigned_opinion_workload* with date parameters October 1, 2020, through September 30, 2021; the results were filtered to show only Judge Newman's authorships "Newman" and excluded non-merits cases including miscellaneous cases, cases then-still pending (*disp_date = null*), and Rule 36 dispositions (*aopntype = 7*).

11. The information from DbVisualizer was copied into Excel to be in a readable format and with duplicate cases removed.² From this data, I calculated the time between the authorship assignment of the case and the opinion issuance

¹ The deviations from the mean calculation is the Z score value, or (Judge Newman's result-Remaining Judge Mean)/Standard Deviation.

² Duplicate cases will appear on this data extract whenever multiple opinions are issued in a case, such as if the panel issues a second opinion as part of a petition for rehearing.

data using the *Days(X, Y)* formula and the averaged the results. During this period, Judge Newman's average time from authorship assignment to opinion issuance was 249.11 days (Exhibit D).

12. From October 1, 2020, through September 30, 2021, the remaining judges who were in active service during this entire period authored an average of 42 majority opinions. This information was retrieved and calculated from the Judges' Assigned Opinion Workload report from SSRS (Exhibit C). The underlying cases supporting this calculation were retrieved from DbVisualizer using function *cafc_rpt_judges_assigned_opinion_workload* with date parameters October 1, 2020, through September 30, 2021; the results were filtered to show only active judge authorships³ and excluded non-merits cases including miscellaneous cases, cases then-still pending (*disp_date = null*), and Rule 36 dispositions (*aopntype = 7*).
13. The information from DbVisualizer was copied into Excel to be in a readable format and with duplicate cases removed. From this data, I calculated the time between the authorship assignment of the case and the opinion issuance data using the *Days(X, Y)* formula and the averaged the results.⁴ During this

³ Excluding Judge Newman, only the following judges were in active status and were assigned to merits panels during this entire period: Chief Judge Moore, Judge Lourie, Judge Dyk, Judge Prost, Judge Reyna, Judge Taranto, Judge Chen, Judge Hughes, and Judge Stoll.

⁴ Days where the case was stayed between authorship and opinion issuance were excluded from the calculation.

period, the remaining active judge average time from authorship assignment to opinion issuance was 60.61 days, with a standard deviation of 74.22 (Exhibit E). Judge Newman's average time from authorship assignment to opinion issuance of 249.11 days was 2.54 standard deviations from the remaining active judge participation mean.

Judge Newman's Opinion Authorship from October 1, 2021, through March 24, 2023

14. From October 1, 2021, through March 24, 2023, Judge Newman authored 10 majority opinions. This information was retrieved from the Judges' Assigned Opinion Workload report from SSRS (Exhibit F). The underlying cases supporting this calculation were retrieved from DbVisualizer using function *cafc_rpt_judges_assigned_opinion_workload* with date parameters October 1, 2021, through March 24, 2023; the results were filtered to show only Judge Newman's authorships "Newman" and excluded non-merits cases including miscellaneous cases, cases then-still pending (*disp_date = null*), and Rule 36 dispositions (*aopntype = 7*).
15. The information from DbVisualizer was copied into Excel to be in a readable format and with duplicate cases removed. From this data, I calculated the time between the authorship assignment of the case and the opinion issuance data using the *Days(X,Y)* formula and then averaged the results. During this period, Judge Newman's average time from authorship assignment to opinion issuance was 198.75 days (Exhibit G).

16. From October 1, 2021, through March 24, 2023, the remaining judges who were in active service during this entire period authored an average of 58.33 majority opinions. This information was retrieved and calculated from the Judges' Assigned Opinion Workload report from SSRS (Exhibit F). The underlying cases supporting this calculation were retrieved from DbVisualizer using function *cafc_rpt_judges_assigned_opinion_workload* with date parameters October 1, 2021, through March 24, 2023; the results were filtered to show only active judge authorships⁵ and excluded non-merits cases including miscellaneous cases, cases then-still pending (*disp_date = null*), and Rule 36 dispositions (*aopntype = 7*).
17. The information from DbVisualizer was copied into Excel to be in a readable format and with duplicate cases removed. From this data, I calculated the time between the authorship assignment of the case and the opinion issuance data using the *Days(X,Y)* formula and the averaged the results.⁶ During this period, the remaining active judge average time from authorship assignment to opinion issuance was 53.17 days (Exhibit H), with a standard deviation of

⁵ Excluding Judge Newman, only the following judges were in active status and were assigned to merits panels during entire period: Chief Judge Moore, Judge Lourie, Judge Dyk, Judge Prost, Judge Reyna, Judge Taranto, Judge Chen, Judge Hughes, and Judge Stoll. Although Judge Cunningham was serving as of September 1, 2021, she was not assigned to a panel until November 2022.

⁶ Days where the case was stayed between authorship and opinion issuance were excluded from the calculation.

53.18. Judge Newman's average time from authorship assignment to opinion issuance of 198.75 days was 2.46 standard deviations from the remaining active judge participation mean.

Judge Newman Cases Under Submission

18. I reviewed the circulated September 2022 Cases Under Submission – Aged report, which reports the number of dates a case has been waiting for opinion following assignment. At the time, Judge Newman had only three opinion authorships pending, all over which were pending for more than 200 days (Exhibit I).⁷

Reassignment of Opinion Authorship from Judge Newman

19. In reviewing the recent history of reassignment of opinion authorship from Judge Newman, I personally retrieved and reviewed the docket sheets from CM/ECF. These docket sheets contain the non-public internal Clerk's Office entry information, including opinion authorship assignments and changes.

20. Judge Newman assigned herself [REDACTED] an unrepresented submitted case, on November [REDACTED] 2020. The case was reassigned to Judge [REDACTED] on July [REDACTED] 2022, after it had been pending an opinion for 624 days.

⁷ To avoid disclosing potential per curiam opinion authorships, I redacted the names of all authoring judges except for Judge Newman's authorship cases. Additionally, the remaining reports included in the original packet are omitted.

After reassignment to Judge [REDACTED] the opinion issued on August [REDACTED] 2022 (Exhibit J).

21. Judge Newman assigned herself [REDACTED], an argued case, on May [REDACTED] 2020. The case was reassigned to Judge [REDACTED] on May [REDACTED] 2021, after it had been pending an opinion for 380 days. After reassignment to Judge [REDACTED], the opinion issued on September [REDACTED] 2021 (Exhibit K).

22. Judge Newman assigned herself [REDACTED], an unrepresented submitted case, on February [REDACTED] 2022. The case was reassigned to Judge [REDACTED] on February [REDACTED] 2023, after it had been pending an opinion for 374 days. After reassignment to Judge [REDACTED], the opinion was issued on February [REDACTED] 2023 (Exhibit L).

23. Judge Newman assigned herself [REDACTED], an unrepresented submitted case, on May [REDACTED] 2020. The case was reassigned to Judge [REDACTED] on March [REDACTED] 2021, after it had been pending an opinion for 302 days. After reassignment to Judge [REDACTED], the opinion issued on March [REDACTED] 2021 (Exhibit M).

24. Judge Newman assigned herself [REDACTED], an argued case, on January [REDACTED] 2022. The case was reassigned to Judge [REDACTED] on October [REDACTED] 2022, after it had been pending an opinion for 269 days. After reassignment to Judge [REDACTED], the opinion issued on December [REDACTED] 2022 (Exhibit N).

25. Judge Newman assigned herself [REDACTED], an unrepresented submitted case, on September [REDACTED] 2022. The case was reassigned to Judge [REDACTED] on January [REDACTED] 2023, after it had been pending an opinion for 126 days. After reassignment to Judge [REDACTED], the opinion issued on March [REDACTED] 2023 (Exhibit O).

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of American that the foregoing is trust and correct.

Executed on April 6, 2023, in Washington, D.C.

[REDACTED]

Chief Deputy Clerk
U.S. Court of Appeals for the Federal Circuit

*Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, and O
have been redacted in their entirety for confidentiality purposes.*

United States Court of Appeals for the Federal Circuit

In re Complaint No. FC-23-90015

* * *

AFFIDAVIT [Affidavit 14]

I, [REDACTED], do hereby swear under oath that the following is true to the best of my knowledge.

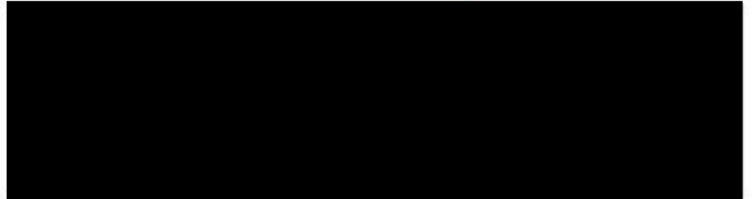
1. From the period of May 31, 2023, through the date of this declaration, I have served as the acting clerk of court for the U.S. Court of Appeals for the Federal Circuit.
2. The Federal Circuit sits in session regularly each month of the year for one week at a time, also known as “court week.” The panel and case assignments for each court week are determined two months before the given court week. For example, the court week in August is set two months earlier in June. There is a predefined cycle to the planning for each court, which has been in existence at the Federal Circuit for some time.
3. The first stage of the process is judge availability. For any given court sitting, the judges first advise of their availability by the conclusion of each month’s weekly court session week. This availability is for the court session to be held two months later. For example, judges advise of their availability to the Chief Judge’s chambers no later than Friday of June court week for a sitting in August.

4. The Chief Judge's Judicial Assistant enters this information into the court's panel calendaring system.
5. The week following court week, the calendaring clerk in the Clerk's Office runs a function in the court's panel calendaring system, which randomly assigns judges to panels based on their pre-entered availability. The panels are sent back to the Chief Judge's chambers for review before finalization.
6. Once the panels are finalized, the calendaring clerk imports available cases into the court's panel calendar system from the court's electronic case management system. The cases are then randomly assigned to the panels previously entered into the system. The assignment of cases to panels, i.e., "calendaring," is completed by the 15th of the month. Judges sitting on panels for that session are provided with reports of their assigned cases so they can perform conflict screening.
7. Judges review their panel assignments for any conflicts. If conflicts are identified, the calendaring clerk will substitute that case with another random case from the list of cases ready for calendaring.
8. The preliminary calendars are distributed by the 21st of the month. At this stage, electronic and paper briefs are distributed and delivered to chambers and the judges and their staff may begin preparing the cases. Public notices are issued to counsel in the calendared cases and the calendar of scheduled cases is released to the public.

9. The term “preliminary calendar” is misleading in that it suggests the calendar may undergo additional substantive changes after this date. This is not accurate. Because only six weeks typically exist between the preliminary calendar and court week, adjustments during this period are severely limited to the following situations so as to minimize issues that might disrupt the schedule: (a) substituting a judge on a single case due to a later-identified conflict (e.g., plus panel); (b) rescheduling a case due in response to a motion; or (c) removal of a case from the argument calendar either by motion or sua sponte decision of the panel. The specific cases and the panel compositions do not otherwise change after issuance on the 21st.
10. Adjusting the panels after the preliminary calendar is released creates considerable disruption to the court. First, the judge added after the preliminary calendar date has less time to prepare for the argument than the other members of the panel do before the calendared date. Second, the judge who was removed from the case is not reassigned to another case and will likely have already invested time in preparing for argument on that case. Third, the court is diligent in maintaining an equal and randomized assignment of cases to the court’s active judges. Changes to the calendar beyond the occasional conflict-substitution in a single case impacts the overall assignment distribution. Finally, any adjustment that would change when the case is scheduled adversely impacts counsel since they too have a

limited window in which to prepare for argument and, in many cases, make travel arrangements to attend argument in Washington, D.C.

DATED this 26th day of June, 2023.



Sworn to and subscribed before me this 26th day of June, 2023.

Patrick B. Chesnut
Notary Public



Exhibit 1

From: [Chief Judge Kimberly A. Moore](#)
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: [REDACTED]
Date: Wednesday, April 19, 2023 3:48:00 PM

Effective immediately, [REDACTED] is no longer an employee of the Newman chambers. He will no longer answer Judge Newman chambers phone lines or have access the chambers Y drive or receive emails to [REDACTED]. [REDACTED] remains available to assist with matters of transition and has prepared a transition memo which will be sent to chambers by [REDACTED]. There should be no direct communication from any member of the Newman chambers including the judge to [REDACTED]. All communication with [REDACTED] from any member of the Newman chambers whether by email, phone, teams or otherwise should be directed exclusively to [REDACTED] who will then relay the information to [REDACTED].

Kimberly Moore

The Honorable Kimberly A. Moore
Chief Judge
U.S. Court of Appeals for the Federal Circuit

Exhibit 2

From: Judge Pauline Newman
Sent: Wednesday, April 19, 2023 4:29 PM
To: Chief Judge Kimberly A. Moore
Cc: [REDACTED]
Subject: Re: [REDACTED]

I agree that this is appropriate. Please process [REDACTED] departure expeditiously.

Sent from my iPhone

On Apr 19, 2023, at 3:49 PM, Chief Judge Kimberly A. Moore [REDACTED] wrote:

Effective immediately, [REDACTED] has resigned from the Newman chambers. [REDACTED] has asked that no person in the Newman chambers including the Judge should communicate with him in any manner. I instruct the chambers that [REDACTED] request for no contact must be followed. [REDACTED] has removed his personal items from the Newman chambers. IT has been instructed to remove [REDACTED] access to the chambers Y drive and from the [REDACTED] distribution list.

Kimberly Moore

The Honorable Kimberly A. Moore
Chief Judge
U.S. Court of Appeals for the Federal Circuit

Exhibit 3

From: Judge Pauline Newman
Sent: Thursday, April 27, 2023 5:25 PM
To: Chief Judge Kimberly A. Moore
Cc: [REDACTED]
Subject: Re: Support services

Judge Moore,

I never released my paralegal [REDACTED] from my chambers staff. His movement to your staff, without consultation with me, violates his confidentiality and other obligations to me.

Nor have I released my law clerk [REDACTED]. I observe that he is now listed as "law clerk— chambers of [REDACTED]" This was not cleared with me, and I was never notified of this move, again in violation of the confidentiality of my chambers, and in violation of my right to law clerk services.

Judge Newman

Sent from my iPhone

On Apr 27, 2023, at 9:43 AM, Chief Judge Kimberly A. Moore [REDACTED] wrote:

Judge Newman,

Your paralegal ceased to be a member of your chambers staff on April 19, 2023 and the circumstances surrounding this are, as you know, a matter of on-going proceedings.

You requested to bring in a temporary assistant (you indicated that your prior assistant [REDACTED] was willing). This was approved days ago and our HR [REDACTED] has repeatedly tried to process her return but you have refused to allow her to proceed. If there is delay in processing your cases due to not having an assistant (despite having three law clerks) that could have been cured by your permitting HR to proceed to bring back your prior assistant-which was repeatedly offered to you.

Given that you refuse to bring in exactly the temporary assistant services you requested unless the court posts an advertisement for a permanent position, and are using your lack of assistant support as an excuse for further delays in processing cases please accept the court's repeated offer to bring in a temporary assistant and our HR team will also begin the process of posting for a replacement.

Kimberly Moore

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Exhibit 4

From: [Chief Judge Kimberly A. Moore](#)
To: [Judge Pauline Newman](#)
Subject: RE: Judicial assistant and law clerk positions
Date: Tuesday, May 9, 2023 8:40:17 PM
Attachments: [image001.png](#)
[image002.png](#)

Judge Newman:

There has been nothing uncertain or ambiguous in the communications with you concerning hiring a permanent replacement for your JA/paralegal. On April 27, 2023, emails both from me and from [REDACTED] made clear that I had authorized hiring a permanent replacement. The only reason that process has not moved forward is that you have failed to approve any of the versions of the vacancy announcement that [REDACTED] has transmitted for your review.

Specifically, in an email at 9:43 am on April 27, I asked you to accept the court's repeated offer to bring in a temporary assistant and also explained that HR would begin the process of posting for a permanent replacement. Posting for a replacement necessarily indicates that hiring has been authorized, it makes no sense to suggest that the court has authorized you to publicly advertise that you are hiring for a vacant position if there is not, in fact, authority to hire for that position. Less than an hour after my email, at 10:25 am, [REDACTED] sent you an email with a draft of the vacancy announcement. Her email made it clear that the full hiring process had been authorized as she anticipated later steps in the process and asked you how you would like to receive the packages for qualified applicants.

On Sunday April 30, 2023, at 6:35 pm you responded to [REDACTED]. You did not raise any concern that there was some uncertainty as to whether hiring a permanent replacement had actually been authorized. Instead, you asked for a copy of the vacancy announcement that had been used to recruit a paralegal for your chambers in 2021. In several further email exchanges with [REDACTED], you went back and forth over the draft vacancy announcement until [REDACTED] informed you by email of May 2, 2023 at 2:05 pm that a link you had sent her (showing a vacancy announcement at the D.C. Court of Appeals) was not working. [REDACTED] included an updated draft of the vacancy announcement and asked you to approve it for posting. You failed to respond to that request and [REDACTED] was unable to move forward. [REDACTED] has repeatedly sought approval from you to move forward with the temporary service you requested and the permanent service you requested. Any failure to acquire these services for you is due to your failure to authorize [REDACTED] to move forward.

If you wish to hire a permanent JA/paralegal, please review and approve the vacancy posting that [REDACTED] has sent to you.

Kimberly Moore

Kimberly A. Moore
Chief Judge
U.S. Court of Appeals for the Federal Circuit

From: Judge Pauline Newman [REDACTED]
Sent: Tuesday, May 9, 2023 3:48 PM
To: [REDACTED]; Chief Judge Kimberly A. Moore [REDACTED]
Cc: Judge Pauline Newman [REDACTED]
Subject: RE: Judicial assistant and law clerk positions

Yes indeed; this was the reason for my uncertainty. Authorizing "beginning the process of posting" is not the same as authorizing hiring the replacement. I ask Judge Moore to confirm that she authorizes hiring the replacement, not just beginning the process of posting.

Similarly, I ask Judge Moore to confirm that there are no obstacles to my proceeding with hiring a fourth law clerk.

PN

From: [REDACTED]
Sent: Tuesday, May 9, 2023 2:38 PM
To: Judge Pauline Newman [REDACTED]
Cc: Chief Judge Kimberly A. Moore [REDACTED]
Subject: RE: HR question

Hi Judge Newman,

The Chief gave approval to recruit for the permanent refill of your JA/paralegal position on April 27th. Please see the email attached from the Chief at 9:43AM on that date where she states that "HR will begin the process of posting for a replacement." Shortly after the Chief's email, I followed-up with an email sent directly to you on the same date at 10:23 AM (also attached) letting you know that in light of the Chief's approval I was sending along a draft vacancy announcement for your review/approval and that once the announcement was finalized I would post it publicly.

After the two emails attached and referenced above, you and I exchanged several emails regarding the announcement (highlighted below). The last email in this exchange is an email I sent to you on May 2nd, in which I attached a draft announcement for a JA rather than a paralegal and asked that you review and approve so that I could move forward and post it.

[REDACTED]

[REDACTED]

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

[REDACTED]

From: Judge Pauline Newman [REDACTED]
Sent: Tuesday, May 9, 2023 1:42 PM
To: [REDACTED]
Cc: Chief Judge Kimberly A. Moore [REDACTED]
Subject: Re: HR question

Thank you, [REDACTED]. I have been awaiting word that Judge Moore has approved the hiring of a permanent JA on posting of that opening. If I missed receipt of notice of such approval, please resend.

PN

Sent from my iPhone

On May 9, 2023, at 1:10 PM, [REDACTED] wrote:

Chief Judge Moore,

I have been in communication with Judge Newman regarding both the temporary rehire of [REDACTED] and the recruitment for a permanent fill of the JA/paralegal position in her chambers for several weeks. I am currently at a standstill with both [REDACTED] rehire and the recruitment, as I am awaiting responses/approvals from Judge Newman.

Specifically, I am waiting for Judge Newman to confirm specific details of [REDACTED] return and provide approval for me to begin the process of seeking a salary offset waiver from the AO. My last email to Judge Newman regarding [REDACTED] was on May 3rd and I have not yet received a response from her. [REDACTED] called me yesterday with HR questions specific to returning to the court as a rehired annuitant and I am expecting a follow-up email from her. I am also waiting for Judge Newman to approve the draft JA vacancy announcement for her chambers position. My last email to her regarding this matter was on May 2nd and I have not yet received a response from her.

Below is timeline of my communication with Judge Newman regarding both matters. Communications in blue primarily relate to [REDACTED] rehire and items in red primarily relate to the recruitment for a permanent fill.

Monday, April 24, 2023

1. 2:20 PM: Telephone call with Judge Newman to discuss the temporary rehire of [REDACTED], which you

approved for a period of up to 90 days, with the possibility of an extension. I also notified her of your approval to seek a waiver of the salary offset that rehired annuitants are subject to, so that [REDACTED] could potentially receive her OPM annuity as well as a full salary for time worked for the court. Judge Newman denied my request to reach out to [REDACTED] to begin the rehire process and stated that I was not to contact [REDACTED] until the recruitment process begins for a permanent replacement for her JA/paralegal vacancy.

2. 4:09 PM: I sent a follow-up e-mail to Judge Newman shortly after our call to restate the approval to temporarily rehire [REDACTED] and to again offer to reach out to [REDACTED].
3. 4:53 PM: Judge Newman responded by email indicating that she requires a permanent as well as temporary solution to her judicial needs. No response to my inquiry about contact [REDACTED].

Tuesday, April 25, 2023

1. 2:49 PM: I responded to Judge Newman's last email and again asked if I could begin the process of bringing back [REDACTED] to assist her in chambers.
2. 3:53 PM: Judge Newman responded by asking me to assure her that the permanent JA recruitment will be listed promptly.

Wednesday, April 26, 2023

1. 3:24 PM: I responded to Judge Newman and explained that I was not in the position to guarantee the posting of the permanent position due to the judicial council vote prohibiting her from hiring any permanent staff and again asked for permission to move forward with [REDACTED].
2. 3:55 PM: Judge Newman responded stating that the court has an obligation to provide her "statutory judicial services" and that she understands my email to mean that the judicial council continues to refuse to allow her JA position to be filled.

Thursday, April 27, 2023

1. 10:25 AM: As a follow-up to the email that you sent to Judge Newman at 9:43 AM, which authorized the recruitment for a permanent replacement for [REDACTED], I sent an email to Judge Newman containing a draft vacancy announcement for a chambers paralegal. I indicated that I would get the announcement posted as soon as she approved it. I also asked if I could reach out to [REDACTED] to begin the process of her temporary rehire.

Sunday, April 30, 2023

2. 6:35 PM: Judge Newman responded to my email asking for a copy of the vacancy announcement that was used for the recruitment for her chambers paralegal in 2021. Judge Newman also stated that she did not want [REDACTED] to return as a re-employed annuitant but rather as a contractor.

Monday, May 1, 2023

1. 3:25 PM: I sent Judge Newman a copy of the 2021 paralegal vacancy announcement, as requested. My email also explained the AO procurement regulations related to contract employees and provided links to the regulations. I explained that the only way for [REDACTED] to return as a contractor would be through a temporary staffing agency contracted by the court.
2. 7:35 PM: Judge Newman emailed with a question about contracting agencies. She also expressed concern regarding [REDACTED] facing a salary offset as a reemployed annuitant and provided comments regarding the delay in recruiting for her permanent position and the oral argument paneling for July.

Tuesday, May 2, 2023

3. 9:58 AM: I responded to Judge Newman reminding her that on April 24th, I notified her that you agreed to seek approval from the Director of the AO to waive the salary offset for [REDACTED]. I clearly explained again that the waiver would allow [REDACTED] to receive her full pension AND salary for hours worked at the court. I stated that I was "happy and ready to assist with the waiver request process."
4. 10:32 AM: Judge Newman emailed "To be clear: Are you saying she would receive no additional pay for working at the court?"
5. 10:40 AM: I wrote to Judge Newman explaining again that [REDACTED] would receive her full annuity (pension payment), as well as pay for hours worked. I asked the judge to provide the following information so that I could complete the waiver request form: 1) whether [REDACTED] would be full-time or part-time; 2) approximately how many hours per week [REDACTED] will work; and 3) the effective date of [REDACTED] return.
6. 11:04 AM: Judge Newman wrote to ask if [REDACTED] would be paid for her work at the court and what would happen to her pension. She indicated that she wants [REDACTED] to work "as the need arises" and that [REDACTED] is to be paid for days worked. She also requested to see the waiver form.
7. 11:18 AM: I responded to Judge Newman with pay rate details, restated that there would be no effect on her pension, and indicated that [REDACTED] could work on an intermittent basis. I explained the process for reporting [REDACTED] hours to HR. I also provided a draft of the waiver form, detailed the additional information that I needed Judge Newman to provide, and provided next steps.
8. 1:27 PM: Judge Newman sent an email requesting that I use a linked vacancy announcement for a JA from the DC Court of Appeals for her recruitment. The link did not work and the announcement was no longer on the DC Court of Appeals site.
9. 2:05 PM: I emailed Judge Newman to let her know that the link was broken. I asked her to confirm that she would like to hire a JA rather than a chambers paralegal. I provided a draft of an updated vacancy announcement with the appropriate duties and requirements for a JA and asked her to review for posting.

10. 9:35 PM: Judge Newman responded inquiring again whether [REDACTED] pension annuity would be affected and whether she would be separately paid for time worked at the court. Judge Newman asked about how [REDACTED] would be paid for hours worked at the court, whether [REDACTED] would be eligible for travel reimbursement, and if there was any additional information the judge needed to know.

Wednesday, May 3, 2023

1. 9:13 AM: I responded to Judge Newman with assurance that, if approved by the AO, [REDACTED] annuity payments will continue uninterrupted and that in addition to her annuity she will also receive a separate payment for her earnings for whatever hours she works for the judge. I further explained the method and timing of payments and notified Judge Newman that [REDACTED] is not eligible for travel reimbursement.

Monday, May 8, 2023

2. 4:22 PM: I spoke with [REDACTED] by phone, returning a voice mail that she left for me at 3:30 PM. [REDACTED] had a number of questions regarding the effect on her pay and benefits of returning as a rehired annuitant. I provided answers to the questions I was able to and promised to follow-up with answers to those questions that required more research. [REDACTED] stated that she would prefer to have all of the answers in writing and said that she would send me an email with all of her questions.

Please let me know if you have any questions.

Thanks,

[REDACTED]

[REDACTED]

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

[REDACTED]

From: Chief Judge Kimberly A. Moore [REDACTED]

Sent: Tuesday, May 9, 2023 10:21 AM

To: [REDACTED]

Subject: HR question

[REDACTED]

Can you please check in with Judge Newman because weeks ago her requests for judicial assistance were approved? Why hasn't this moved forward? As I understand it:

April 19: [REDACTED] resigned from Judge Newman's chambers on April 19, 2023 and asked that there be no further communication between him and Judge Newman. He was assigned to our Clerk's Office where he now works.

Judge Newman requested that she be permitted to bring back her former judicial assistant, [REDACTED] who her chambers claimed was ready and willing to come back. As I understand it, you contacted the AO to determine how to bring back [REDACTED] (a retired annuitant) in a manner which would not diminish her retirement annuity. I agreed to petition the AO to waive the salary set-off that [REDACTED] would face as a reemployed annuitant. This way [REDACTED] would receive her full retirement annuity and get paid for any hours she worked at the court.

April 24: I understand you to have communicated the approval to bring [REDACTED] back to Judge Newman on April 24 including the fact that [REDACTED] will be brought back in a manner which allows her to keep both her full retirement annuity and get paid.

April 27 (9:43 am): I sent Judge Newman an email (copying you) which approved her request to advertise to hire a permanent paralegal/assistant.

Given that her request for temporary assistance was approved 16 days ago (just 5 days after her assistant resigned) and that her request to advertise for a permanent replacement was approved 13 days ago, I am confused about her below claims that either I or the court continue to deprive her of what she refers to as secretarial services.

Can you update me on this process and reach out again to Judge Newman?

With gratitude,

Kimberly Moore

The Honorable Kimberly A. Moore
Chief Judge
U.S. Court of Appeals for the Federal Circuit

From: [REDACTED]
Sent: Monday, May 8, 2023 5:21 PM
To: Chief Judge Kimberly A. Moore [REDACTED]
Subject: Fwd: Governance and Education Travel Report (fka Non-Case Related Travel Report) Report Due May 15

Chief,

See PN's response below.

[REDACTED]

From: Judge Pauline Newman [REDACTED]
Sent: Monday, May 8, 2023 5:11 PM
To: [REDACTED]
Cc: Judge Pauline Newman [REDACTED]
Subject: Re: Governance and Education Travel Report (fka Non-Case Related Travel Report) Report Due May 15

[REDACTED], I do not choose to do secretarial work, whether or not any senior judges are obliged to do so. My JA routinely keeps these records and fills out these forms for my review. It appears that the court chooses to continue to deprive me of routine services.

PN

Sent from my iPhone

On May 8, 2023, at 4:23 PM, [REDACTED] wrote:

Judge Newman,

Almost all the senior judges enter this information in Infoweb themselves and many of them do not have secretarial support. This is a mandatory report required by all judges; only you have your information about your travel. You will need your credentials for [Infoweb](#), and here are the [instructions](#) on how to enter the data. It is a very user-friendly system. Perhaps one of your law clerks could assist you. If your staff has any questions, I'd be happy to answer them.

Best,

[REDACTED]
Chambers of Chief Judge Kimberly A. Moore
U.S. Court of Appeals for the Federal Circuit
717 Madison Place NW
Washington, DC 20439
[REDACTED]

From: Judge Pauline Newman [REDACTED]

Sent: Monday, May 8, 2023 3:40 PM

To: [REDACTED]

Subject: Re: Governance and Education Travel Report (fka Non-Case Related Travel Report) Report Due May 15

[REDACTED] since I don't at present have a JA, by action of the Chief Judge, please advise how the court proposes to assist in handling these reporting requirements.

PN

Sent from my iPhone

On May 8, 2023, at 3:09 PM, [REDACTED] wrote:

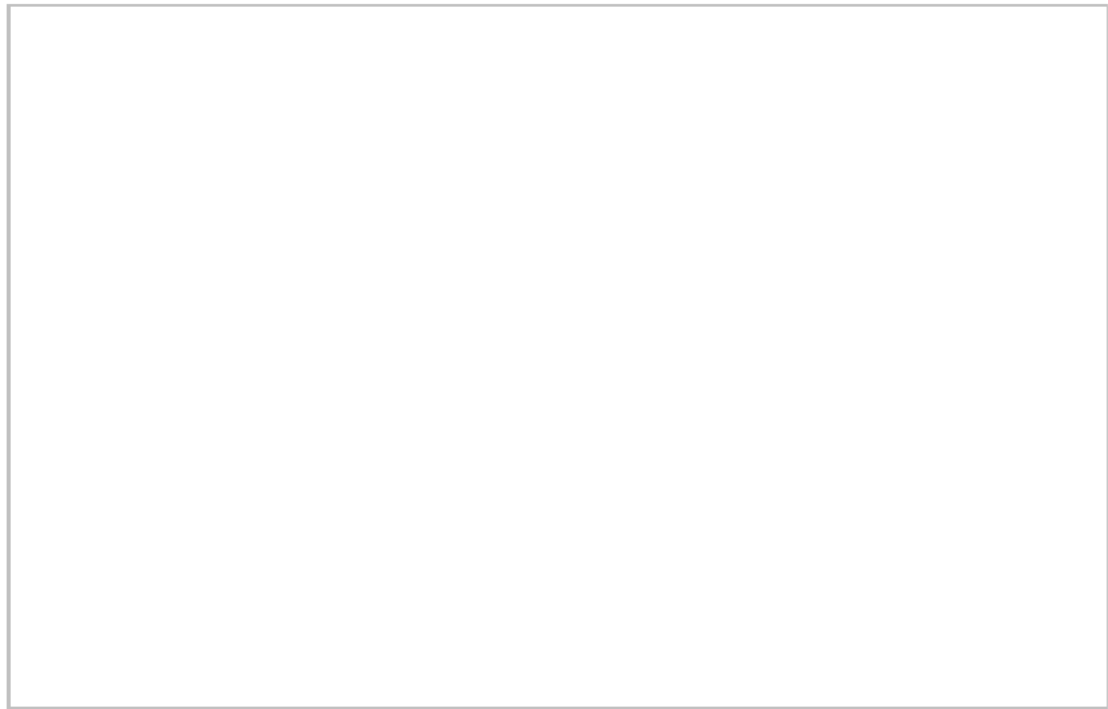
Good afternoon,

This email is a friendly reminder that the Governance and Education Travel Report (fka Non-Case Related Travel Report) is due **May 15**. This report must be completed even if your judge didn't do any relevant traveling in 2022, which is known as a negative report.

I've reviewed the entries and noticed that some hadn't clicked the **Certify Travel** button. So please be sure to do so by May 15.



Also, if your judge attended our Judicial Conference, it is a reportable item, according to [The Guide to Judiciary Policy](#). Please see the rule below and refer to your judge. Please let me know if you need me to decertify you to make any changes.



I will be on travel next week with the court. So if you need me, please email or text me at [REDACTED], and I will get back to you as soon as possible.

Thanks,

[REDACTED]

Chambers of Chief Judge Kimberly A. Moore
U.S. Court of Appeals for the Federal Circuit
717 Madison Place NW
Washington, DC 20439
[REDACTED]

Exhibit 5

From: [REDACTED]
Sent: Thursday, April 27, 2023 8:23
To: Judge Pauline Newman [REDACTED]
Cc: Greg.Dolin@ncla.legal; mark.chenoweth@ncla.legal
Subject: RE: CONFIDENTIAL: Follow-up

Judge Newman,

Respectfully, I have not withheld any information from your counsel and stand by what I stated in the below email. As I previously explained to you by email on April 24, 2023, your concerns about staffing for your chambers need to be addressed to the Judicial Council and not me. I was not involved in the decision concerning the removal of staff from your chambers or the question of whether to fill the vacancy. Your request for expansion of services by the Clerk's Office—namely direct secretarial support and assistance with editing and preparing opinions—is outside of the scope of our authority or services we provide to any other judge of this court. Accordingly, I promptly referred your request to Chief Judge Moore, who responded to you the same day. Absent a contrary direction from either the Chief Judge or the Judicial Council, I cannot proceed and so again, I request that you direct your concerns to them.

The Clerk's Office remains available to provide the same services to you that we provide to any other chambers, which we have done so since the beginning of this matter. Specifically, we have continued to provide you with IT support and assistance; full access to existing communication and network systems; and the processing of judicial directions from you and your chambers, including promptly issuing an opinion on your behalf earlier this week. Once you alerted me to the issue of a removed desktop from your chambers, I attempted to clarify for you what happened; explained that the movement of the desktop from your chambers was standard policy when a staff member changes desks; explained that even with the movement of the desktop there was no chambers information on the device as all of your chambers records were saved to and available on your private chambers network drive; and directed the prompt restoration of a desktop to your chambers, which has since happened. I explained this all to you over several email exchanges ending on April 25, 2023.

You have my consent to share our several email exchanges with your counsel.

Regards,

[REDACTED]



[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED] | www.ca9c.uscourts.gov

From: Judge Pauline Newman [REDACTED]
Sent: Wednesday, April 26, 2023 17:40
To: [REDACTED]
Cc: Greg.Dolin@ncla.legal; mark.chenoweth@ncla.legal
Subject: Re: CONFIDENTIAL: Follow-up

[REDACTED], you have withheld from my counsel the information that you refused to permit filling the paralegal/secretarial position in my chambers, unlike all the other judges. My judicial activity is highly prejudiced.

Judge Newman

Sent from my iPhone

On Apr 25, 2023, at 10:52 AM, [REDACTED] wrote:

Mr. Dolin,

Thank you for speaking with me by phone moments ago.

Appearance and Admission. Since my earlier message to Judge Newman, the Judicial Council has waived the need for formal entry of appearance. Because you clarified that you are now lead counsel on this matter and a member of the Federal Circuit bar, this is moot anyway. We do not require any separate filing on this point.

Service and Filing. In order to expedite the receipt by you and the Judicial Council of all matters and avoid the need for paper delivery and service, we agreed to the following process.

1. If needed, any future filings with the judicial council on this matter can be emailed to me at this address. Please send anything in PDF format encrypted using the same password we agreed to by telephone.
2. I will serve any orders and items from the judicial council or the special committee to you, Mr. Chenoweth, and Judge Newman by email in the same format, again using the same password.

Copy of Current Orders. I will transmit by email to you today all orders already entered in this matter. The files will be encrypted with the same password.

Access to Court Resources. While on the phone, you asked for clarification on Judge Newman's ability to access her chambers materials and issue opinions. I

clarified that Judge Newman has continued and continues to have full access to her chambers materials and the ability to transmit opinions to the Clerk's Office for issuance. I noted that I separately clarified this issue for Judge Newman by email earlier today. The Clerk's Office remains available to provide the same technical assistance and support for Judge Newman that we currently provide to all of the other judges of the court.

Please let me know if I can clarify anything else. My direct dial and mobile number are below as well if you need to reach me.

Regards,


[REDACTED]



[REDACTED]
Chief Deputy Clerk, Clerk's Office
U.S. Court of Appeals for the Federal Circuit

[REDACTED] | www.ca9c.uscourts.gov

Exhibit 6

From: Judge Pauline Newman
Sent: Thursday, July 6, 2023 10:23 AM
To: Chief Judge Kimberly A. Moore
Cc: 
Subject: Return of my chambers computer

Chief Judge Moore,

I once more request the return of my chambers computer, with my stored information . It is apparently being withheld at your instruction, for my requests have all been rejected. Please instruct the immediate return of the computer that was taken from my chambers.

Judge Newman

Sent from my iPhone

From: Chief Judge Kimberly A. Moore
Sent: Thursday, July 6, 2023 11:49 AM
To: Judge Pauline Newman
Cc: [REDACTED] [Director of IT; Help Desk Manager; Clerk of Court]
Subject: RE: Return of my chambers computer

Judge Newman,

It is my understanding that you have raised repeatedly the concern that when [REDACTED] resigned from your chambers his computer had your stored information on it. Our Clerk of Court, [REDACTED], and our IT Department, all of whom are copied here, have explained to you multiple times that when [REDACTED] resigned any of your chamber's information that had been stored locally on his computer was uploaded to your chambers y drive and that his computer's access to your y drive was immediately disabled by our IT staff. I have been informed that our Clerk of Court and our IT Department have both examined [REDACTED] computer on multiple occasions and confirmed that there is none of your stored information on his computer and that his computer has no access to your y drive. I have further been informed that they have communicated this to you repeatedly by email. I copy them on this so that they may confirm yet again, as you have been repeatedly told, that there is no computer with your stored information being withheld from you.

The Honorable Kimberly A. Moore
Chief Judge
U.S. Court of Appeals for the Federal Circuit

From: [REDACTED] [Clerk of Court]
Sent: Thursday, July 6, 2023 11:58 AM
To: Chief Judge Kimberly A. Moore; Judge Pauline Newman
Cc: [REDACTED] [Director of IT; Help Desk Manager]
Subject: RE: Return of my chambers computer

Chief Judge Moore and Judge Newman,

I can confirm both that based on my personal knowledge this response is accurate and that there is no computer with Judge Newman's stored information being withheld.

Sincerely,

[REDACTED]



[REDACTED]
Circuit Executive and Clerk of Court
U.S. Court of Appeals for the Federal Circuit

[REDACTED] (direct) | [REDACTED] (mobile) | www.ca9c.uscourts.gov

From: [REDACTED] [Director of IT]
Sent: Thursday, July 6, 2023 12:11 PM
To: Chief Judge Kimberly A. Moore; Judge Pauline Newman
Cc: [REDACTED] [Help Desk Manager; Clerk of Court]
Subject: RE: Return of my chambers computer

Good afternoon,

I can confirm [REDACTED] has no access to Judge Newman's shared drive nor has any of Judge Newman's data stored locally on his PC.

Thanks

[REDACTED] [Director of IT]

From: [REDACTED] [Help Desk Manager]
Sent: Thursday, July 6, 2023 12:23 PM
To: Chief Judge Kimberly A. Moore; Judge Pauline Newman
Cc: [REDACTED] [Director of IT; Clerk of Court]
Subject: RE: Return of my chambers computer

Chief Judge Moore and Judge Newman,

I can confirm [REDACTED] has no access to Judge Newman's shared drive nor has any of Judge Newman's data files stored locally on his PC.

Thanks

[REDACTED] [Help Desk Manager]

From: Judge Pauline Newman
Sent: Thursday, July 6, 2023 4:52 PM
To: [REDACTED] [Help Desk Manager]
Cc: Chief Judge Kimberly A. Moore; [REDACTED] [Director of IT;
Clerk of Court]
Subject: Re: Return of my chambers computer

Who has my chambers computer and its drive containing my files? Whoever has it, please return it immediately.

Judge Newman

Sent from my iPhone

From: Judge Pauline Newman
Sent: Thursday, July 6, 2023 5:06 PM
To: Chief Judge Kimberly A. Moore
Cc: [Redacted] [Director of IT; Help Desk Manager;
Subject: Re: Return of my chambers computer Clerk of Court]

I again request that the computer drive containing my information be immediately returned to me.

Judge Newman

Sent from my iPhone

From: Chief Judge Kimberly A. Moore
Sent: Thursday, July 6, 2023 6:00 PM
To: Judge Pauline Newman
Cc: [REDACTED] [Director of IT; Help Desk Manager;
Clerk of Court]
Subject: RE: Return of my chambers computer

Judge Newman,

I again refer this to our IT Department. But given that they have told you many times now that there is no computer/computer drive containing your information which is being withheld from you, I am not sure what it is that you expect them to do. They have repeatedly told you that all your information is on your y drive, not stored locally on some other computer drive outside your chambers. IT can you please respond to this email from Judge Newman?

The Honorable Kimberly A. Moore
Chief Judge
U.S. Court of Appeals for the Federal Circuit

From: [REDACTED] [Director of IT]
Sent: Thursday, July 6, 2023 7:12 PM
To: Judge Pauline Newman [Help Desk
Cc: Chief Judge Kimberly A. Moore; [REDACTED] Manager; Clerk of
Subject: Re: Return of my chambers computer Court]

Judge Newman,

We have checked, double checked and tripled checked and there is no data on any local computer or drive that belongs to you. All of your data is on the Newman share. There is absolutely nothing to give you. Again all of your data is on the Newman share.

Thanks

[REDACTED] [Director of IT]

Sent from my iPhone

From: Judge Pauline Newman
Sent: Thursday, July 6, 2023 9:54 PM
To: Chief Judge Kimberly A. Moore
Cc: [Redacted] [Director of IT; Help Desk Manager; Clerk of Court]
Subject: Re: Return of my chambers computer

Judge Moore,
Correction. My chambers computer was removed and has not been returned, despite my frequent requests. I require its return.
Judge Newman

Sent from my iPhone

From: Chief Judge Kimberly A. Moore
Sent: Friday, July 7, 2023 8:24 AM
To: Judge Pauline Newman [Director of IT; Help Desk Manager;
Cc: [REDACTED] Clerk of Court]
Subject: RE: Return of my chambers computer

Judge Newman,

I have been informed by IT and our Clerk of Court that the following information has been communicated to you no less than a dozen times in writing by at least three different individuals: our Director of IT, [REDACTED], our Head of IT Help Desk, [REDACTED], and our Clerk of Court, [REDACTED]. Each of whom is copied on this email. I shall nonetheless request that they again explain to you what I understand they have told you repeatedly. [REDACTED]'s computer contains no Newman chambers information; it contains only his Clerk's Office work, his work calendar, his work email, etc. As the many emails sent to you by our IT personnel and Clerk of Court state there is no computer with your information which is being withheld from you. Because no such computer exists, there is nothing that IT could return to you. I ask that our staff confirm this for you yet again, which I hope will resolve your concerns.

The Honorable Kimberly A. Moore
Chief Judge
U.S. Court of Appeals for the Federal Circuit

From: [REDACTED] [Director of IT]
Sent: Friday, July 7, 2023 9:00 AM
To: Judge Pauline Newman [Help Desk
Cc: [REDACTED]; Chief Judge Kimberly A. Moore Manager; Clerk of
Subject: RE: Return of my chambers computer Court]

Judge Newman,

I checked again yesterday and no Newman Chambers files reside on [REDACTED]'s PC. There is nothing to return to you as we have informed you previously that all Newman Chambers files were moved to the Newman Share when [REDACTED] moved down to the Clerk's Office. [REDACTED]'s PC has been scanned on multiple occasions to confirm that no Newman Chambers files reside on his local PC.

Thanks

[REDACTED] [Director of IT]

From: Judge Pauline Newman
Sent: Friday, July 7, 2023 10:43 AM
To: [REDACTED] [Director of IT] [Help Desk
Cc: [REDACTED]; Chief Judge Kimberly A. Moore Manager; Clerk of
Subject: Re: Return of my chambers computer Court]

I require return of the computer and its contents as were in my chambers. Their removal without my knowledge and authorization, have never been explained. Nor did you (or anyone) ask for permission to review the contents and decide what I could keep, as you now tell me was done.

Please return my chambers computer and its contents, as they were when you took them.

Judge Newman

Sent from my iPhone

From: Judge Pauline Newman
Sent: Friday, July 7, 2023 12:16 PM
To: Chief Judge Kimberly A. Moore
Cc: [REDACTED] [Director of IT; Help Desk Manager; Clerk of Court]
Subject: Re: Return of my chambers computer

Judge Moore,
I have no interest in [REDACTED]'s computer. I request the return of my computer and its contents. If it has been destroyed, please advise who authorized the destruction, and why.
Judge Newman
Sent from my iPhone

From: [REDACTED] [Clerk of Court]
Sent: Friday, July 7, 2023 12:34 PM
To: Judge Pauline Newman; [REDACTED] [Director of IT]
Cc: [REDACTED]; Chief Judge Kimberly A. Moore [Help Desk Manager]
Subject: RE: Return of my chambers computer

Judge Newman,

Respectfully, I must disagree that this matter has never been explained to you. I personally have attempted to explain this to you in several email communications. I will again attempt to do so here. Computers are assigned to individuals and not specific chambers or individuals. This has been court policy for many years. When chambers staff leave chambers, their computers are removed, and a new computer is put in it for the new replacing staff member. This has been the practice for any staff of yours who have left your chambers. Because this is a court wide policy, IT staff never asks permission and simply follows the standing policy.

[REDACTED]'s transition memorandum to you explained how he handled his files and made sure that any chambers records were on your network drive not his desktop. On multiple occasions, he has explained to me that his practice was to never save any chambers records on his desktop and only saved them on your chambers network drive. As an extra precaution and in response to your expressed concerns, our IT staff made sure to confirm that none of your records were on his desktop. At no point did any court staff "decide what [you] could keep" or look at any files as you allege. As one of the people involved in the process, I can confirm that we merely confirmed that there were no files remaining on his desktop and that he could no longer access any of your chambers records after he was no longer working in your chambers.

I will also note that I previously offered to have you or a member of your staff personally inspect [REDACTED]'s desktop to confirm the above but this offer was declined.

While I understand your frustration with the situation, my staff and I are at a loss since, as [REDACTED] noted, there are no files that can be returned. Moreover, we have offered repeatedly to assist you with locating any files you cannot find or access. However, through our many conversations, we have yet to learn of any file or record of your chambers that is actually missing or unavailable. If you or a member of your staff identifies such an item, our staff will gladly work with you to locate it.

Sincerely,

[REDACTED]



[REDACTED]
Circuit Executive and Clerk of Court
U.S. Court of Appeals for the Federal Circuit

[REDACTED] (direct) | [REDACTED] (mobile) | www.ca9c.uscourts.gov

From: [REDACTED] [Clerk of Court]
Sent: Friday, July 7, 2023 12:35 PM
To: Judge Pauline Newman; Chief Judge Kimberly A. Moore
Cc: [REDACTED] [Director of IT; Help Desk Manager]
Subject: RE: Return of my chambers computer

Judge Newman,

I'm confused. What computer was removed beyond [REDACTED]'s?

[REDACTED]



[REDACTED]
Circuit Executive and Clerk of Court
U.S. Court of Appeals for the Federal Circuit

[REDACTED] (direct) | [REDACTED] (mobile) | www.ca9c.uscourts.gov

From: Judge Pauline Newman
Sent: Friday, July 7, 2023 1:56 PM
To: [REDACTED] [Clerk of Court]
Cc: [REDACTED]; Chief Judge Kimberly A. Moore [Director of IT; Help Desk Manager]
Subject: Re: Return of my chambers computer

My main chambers computer contains opinion drafts, forms, records, correspondence, and decades of stored and archived material. I cannot believe that all this is routinely destroyed whenever a JA is replaced, and without a word to the judge that the drafts, records, correspondence, and all other stored material must be destroyed without notice. Are you stating that this is the court's policy?

Judge Newman

Sent from my iPhone

From: [REDACTED] [Clerk of Court]
Sent: Friday, July 7, 2023 2:20 PM
To: Judge Pauline Newman
Cc: [REDACTED]; Chief Judge Kimberly A. Moore [Director of IT; Help
Subject: Re: Return of my chambers computer Desk Manager]

Judge Newman,

That is not the policy and not at all what I have been saying for weeks.

Every chambers stores those items on their network drives which are accessible to every computer in that chambers. The items you describe are located on your network drive.

Our policy and practice predates my arrival of at least seven years ago. In just my time at the court, we have never received such inquiries or complaints from any other chambers, including yours, whenever a law clerk or staff member turns over. As such, I remain at a loss as to what the actual is with file access in your chambers.

[REDACTED]
[REDACTED]
Circuit Executive and Clerk of Court
U.S. Court of Appeals for the Federal Circuit

From: Judge Pauline Newman
Sent: Friday, July 7, 2023 2:54 PM
To: [REDACTED] [Clerk of Court]
Cc: [REDACTED]; Chief Judge Kimberly A. Moore [Director of IT; Help
Desk Manager]
Subject: Re: Return of my chambers computer

When [REDACTED] left he took the chambers computer and the chambers telephone. After my complaints the telephone was eventually returned—although it took several days. The computer has never been returned.

If no other chambers has ever complained about removal of their equipment and information, as you say, then no other chambers has been so improperly treated.

Again, I require return of my computer with its drive and content as removed from my chambers.

Judge Newman

Sent from my iPhone

From: [REDACTED] [Clerk of Court]
Sent: Friday, July 7, 2023 3:13 PM
To: Judge Pauline Newman
Cc: [REDACTED]; Chief Judge Kimberly A. Moore [Director of IT; Help
Desk Manager]
Subject: Re: Return of my chambers computer

Judge Newman,

Respectfully, your characterization is contrary to what I and staff have done and experienced in attempting to resolve this matter.

Because no content was ever removed from your chambers and the physical computer was moved per existing policy, I am denying this request as contrary to court policy and consider this matter closed until I am otherwise directed by the Judicial Council.

Sincerely,

[REDACTED]

[REDACTED]
Circuit Executive and Clerk of Court
U.S. Court of Appeals for the Federal Circuit

From: Judge Pauline Newman
Sent: Friday, July 7, 2023 3:44 PM
To: [REDACTED] [Clerk of Court] [Director of IT; Help
Cc: [REDACTED]; Chief Judge Kimberly A. Moore Desk Manager]
Subject: Re: Return of my chambers computer

To be clear: your position is that if is “contrary to court policy “ to return the computer and its drive containing my chambers information?

Judge Newman

Sent from my iPhone

From: [REDACTED] [Clerk of Court]
Sent: Friday, July 7, 2023 4:08 PM
To: Judge Pauline Newman
Cc: [REDACTED]; Chief Judge Kimberly A. Moore [Director of IT; Help
Desk Manager]
Subject: Re: Return of my chambers computer

Judge Newman,

I am at a loss for how different a way I can again explain what I have explained to you repeatedly for months.

Your files are on your network drive. You have access to everything. The computer contains none of your information and we are in possession of nothing of yours that can be returned. Everything was done by court policy. No one on staff has treated you differently or inconsistent with long standing policy. There is nothing left that either I or my staff can do to assist you with accomplishing this factual impossibility you seek.

[REDACTED]

[REDACTED]
Circuit Executive and Clerk of Court
U.S. Court of Appeals for the Federal Circuit

From: Judge Pauline Newman
Sent: Friday, July 7, 2023 4:22 PM
To: [REDACTED] [Clerk of Court] [Director of IT; Help
Cc: [REDACTED]; Chief Judge Kimberly A. Moore Desk Manager]
Subject: Re: Return of my chambers computer

I seek the return of the computer and drive containing decades of my work and my information. It was taken from my chambers and has not been returned. You do not have authority to decide what portion of my stored information should be available to me.

Sent from my iPhone

From: [REDACTED] [Clerk of Court]
Sent: Friday, July 7, 2023 4:24 PM
To: Judge Pauline Newman
Cc: [REDACTED]; Chief Judge Kimberly A. Moore [Director of IT; Help Desk Manager]
Subject: Re: Return of my chambers computer

Judge Newman,

I refer you to our prior email exchanges on this topic. You continue to have access to all of your chambers records.

[REDACTED]

[REDACTED]
Circuit Executive and Clerk of Court
U.S. Court of Appeals for the Federal Circuit

From: Judge Pauline Newman
Sent: Friday, July 7, 2023 4:29 PM
To: [REDACTED] [Clerk of Court] [Director of IT; Help
Cc: [REDACTED]; Chief Judge Kimberly A. Moore Desk Manager]
Subject: Re: Return of my chambers computer

That is incorrect.

Sent from my iPhone

From: [REDACTED] [Clerk of Court]
Sent: Friday, July 7, 2023 4:32 PM
To: Judge Pauline Newman [Director of IT; Help
Cc: [REDACTED]; Chief Judge Kimberly A. Moore Desk Manager]
Subject: Re: Return of my chambers computer

Please let us know what you cannot locate. Our staff is available and willing to assist you.

[REDACTED]
Circuit Executive and Clerk of Court
U.S. Court of Appeals for the Federal Circuit

From: Judge Pauline Newman
Sent: Friday, July 7, 2023 4:44 PM
To: [REDACTED] [Clerk of Court]
Cc: [REDACTED]; Chief Judge Kimberly A. Moore [Director of IT; Help
Subject: Re: Return of my chambers computer Desk Manager]

[REDACTED],
Where is the drive of my removed computer? Please return it immediately, with its contents as it was removed.
Judge Newman

Sent from my iPhone

From: [REDACTED] [Clerk of Court]
Sent: Friday, July 7, 2023 4:50 PM
To: Judge Pauline Newman
Cc: [REDACTED]; Chief Judge Kimberly A. Moore [Director of IT; Help
Subject: Re: Return of my chambers computer Desk Manager]

Judge Newman,

No drive with any contents was removed from your computer. There is nothing for us to return.

[REDACTED]
[REDACTED]
Circuit Executive and Clerk of Court
U.S. Court of Appeals for the Federal Circuit

From: Judge Pauline Newman
Sent: Friday, July 7, 2023 5:13 PM
To: [REDACTED] [Clerk of Court] [Director of IT; Help
Cc: [REDACTED]; Chief Judge Kimberly A. Moore Desk Manager]
Subject: Re: Return of my chambers computer

[REDACTED] [Clerk of Court]

As you well know, the entire computer, drive and all, were removed from my chambers.
Your clever dissembling is shameful.

A court is supposed to represent justice, not trickery.

Judge Newman

Sent from my iPhone

Exhibit 7

From: [REDACTED]
Sent: Tuesday, January 31, 2023 11:10 AM
To: [REDACTED]
Subject: RE: Judge Availability for April 2023 Court Week

Good morning, [REDACTED]:

Judge Newman is available to sit 2-3 days, or as needed for April 2023 court week. Judge Newman advised me our panels may be limited until our back log of older cases is reduced. Thanks so much!

Best,
[REDACTED], M.P.S.
Paralegal to the Honorable Pauline Newman
U.S. Court of Appeals for the Federal Circuit
717 Madison Place NW, Washington, DC 20439
[REDACTED] | [REDACTED]

From: [REDACTED]
Sent: Monday, January 30, 2023 7:50 AM
To: All Judges' Secretaries [REDACTED]
[REDACTED]
Subject: Judge Availability for April 2023 Court Week

Good morning,

Please let me know the number of days your judge is available to sit during April 2023 court week (April 3, 2023 – April 7, 2023) no later than Friday, February 3, 2023.

Thank you,

[REDACTED]
Executive Assistant
Chambers of Chief Judge Kimberly A. Moore
U.S. Court of Appeals for the Federal Circuit
717 Madison Place NW
Washington, DC 20439
[REDACTED] | [REDACTED]

Exhibit 8



NEUROLOGY

at The GW Medical Faculty Associates

2150 Pennsylvania Avenue, NW, 9th Floor

Washington, DC 20037

phone: 202.741.2700 fax: 202.741.2721

Ms. Pauline Newman is a 96 yo United States Circuit Judge of the US court of Appeals who is here to evaluate her mental status.

She is currently under investigation by her Court for "medical impairments" including having had a heart attack and 2 stents -which she denies having- and being "intellectually compromised" and no longer able to function in her capacity as a federal judge. As a consequence she has been denied access to new cases.

Judge Newman denies having cognitive impairment. Her opinions in the past year have been quantitatively analyzed by Law Professor Andrew Michaels at the University of Houston Law School and found to be exemplary. He did not perceive "a significant drop in the quality or thoroughness of her opinions" over the previous decade.

She believes that she is being unfairly treated by her judicial colleagues. Much of this controversy has been depicted in Washington Post accounts over her being prevented from continuing to hear and write opinions on current cases.

Past medical Hx: [REDACTED]

She is a graduate of Vassar College, received a Master of Arts from Columbia University, a Doctor of Philosophy in Chemistry from Yale University and law degree from NY University School of Law. There is no family hx for memory disorders or dementia.

[REDACTED] R wrist is in a cast. She is unable to write.

Review of systems is otherwise not contributory.

On examination,
Her speech is fluid, with normal content and articulation. She describes her medical history and background with great detail and eloquence.

A partial MoCA examination is performed as she is unable to write and therefore cannot follow trail or draw a cube (each worth one point on the 30 point test). She scores 24/28 failing to remember 4 of 5 words after several minutes. All other aspects of the test were precise and correct.

Her head is normocephalic.

Neck is supple.

Cranial nerves,

Fundusoscopic examination discloses bilateral cataracts. EOMi. PERRL.

Sensation is intact. Her face is symmetrical with normal smile and eye closure.

Hearing normal to voice.

Tongue protrudes in midline.

Sensory and Motor exam,

Sensation normal over both hands.

Her arm strength is not tested.

Her gait is normal with normal stride, turn and arm swing. Romberg is negative.

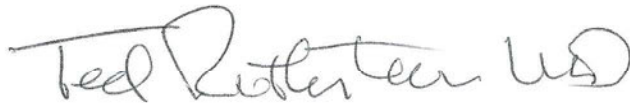
Reflexes are 2+ at the knees and ankles.

Impression,

Judge Newman has a slight limitation in immediate memory as reflected in her MoCA evaluation. Her cognition is otherwise completely normal. Her speech is normal and her ability to provide her vocational and medical history is precise and eloquent.

As she has a cardiac pacemaker and therefore she cannot undergo a Brain MRI with NeuroQuant which could have been used to measure volumes of key brain regions important for memory, she could have a more detailed neuropsychological evaluation as part of her neurological assessment..

My findings would support her having cognitive function sufficient to continue her participation in her court's proceedings.

A handwritten signature in black ink that reads "Ted Rothstein MD". The signature is written in a cursive, flowing style.

Ted L. Rothstein MD
Professor of Neurology
George Washington University
June 21, 2023