

United States Court of Appeals for the Federal Circuit

~~UNDER SEAL (NON PUBLIC ORDER)~~

IN RE COMPLAINT NO. 23-90015

Before MOORE, *Chief Judge*.

ORDER

Pursuant to Rule 5 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, I identify a judicial complaint against Judge Pauline Newman under the Judicial Conduct and Disability Act. I do so having found 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.” 28 U.S.C. § 351(a).

In the summer of 2021, Judge Newman, at the age of 94, was [REDACTED] and having to [REDACTED]. Because those health issues rendered Judge Newman unable to discharge the duties of an active circuit judge, Judge Newman agreed to being taken off motion panels, which are a routine responsibility of all active judges and her sittings were reduced compared to her colleagues. While Judge Newman was able to recover to the point of being able to again participate at oral argument, on [REDACTED], 2022, Judge Newman fainted following an argument and was unable to walk without assistance. Following that event, Judge Newman agreed to further reduction in sittings.

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| Approved for public release by the Judicial Council for the Federal Circuit on April 14, 2023. Refer to the court's website for additional information. |
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Despite these reductions in workload, judges and staff have brought to my attention concerns about Judge Newman's inability to perform the work of an active judge based on their personal experience. Judges and staff have reported extensive delays in the processing and resolution of cases. Concerns have also been raised that Judge Newman may suffer from impairment of cognitive abilities (i.e., attention, focus, confusion and memory) that render Judge Newman unable to function effectively in discharging case-related and administrative duties. It has been stated that Judge Newman routinely makes statements in open court and during deliberative proceedings that demonstrate a clear lack of awareness over the issues in the cases. These concerns were communicated directly to Judge Newman by several judges on March 7, 2023. On March 9, 2023, another judge met with Judge Newman to articulate concerns and urged her to consider senior status. [That judge] reported that she became angry and ended the meeting. That judge followed up with an email to Judge Newman and myself detailing ■■■ concerns on March 14, 2023. Judge Newman did not respond. Several other judges have reported to me that they sought to meet with Judge Newman to express their concerns, but she has not responded to their calls or emails.

After concluding that the information provided me constituted reasonable grounds for inquiry into whether Judge Newman has engaged in misconduct or has a disability, I conducted a limited inquiry and was informed of the following additional information:

- From June 2022 to the present, Judge Newman participated in only 60 cases whereas the average active judge participated in 116. Judge Newman's case participation during this period was approximately 3.5 standard deviations below the mean.

- From October 2020 to September 2021, the average total number of majority opinions authored by active judges (who were present during that period) was 39.5. Judge Newman authored 9 opinions. The next closest judge authored 34 opinions. During this period, the average time between assignment of a case to an authoring judge and issuance of the opinion was 70 days. Judge Newman's average time after assignment to issuance of an opinion was 249 days.
- From October 2021 to the present, Judge Newman authored only 8 majority opinions whereas the average active judge on the court during this same time authored 51. The next closest judge authored 42. During this period the average time between assignment of a case to an authoring judge and issuance of the opinion was 60 days. Judge Newman's average time after assignment to issuance of an opinion was 199 days.
- Our court rules require judges to vote on other judges' opinions within 5 business days and suggest "voting be given priority in each chambers over other matters." Federal Circuit Clerical Procedures #3, ¶ 7. It has been reported by judges and court staff that Judge Newman frequently takes 30 days or more to vote on colleagues' opinions.
- Despite the reduction in Judge Newman's caseload since at least [REDACTED] 2022, her time to issuance has not improved. For example, as of September 30, 2022, Judge Newman had only three cases pending, all of which were older than 90 days. One of those cases [REDACTED] was not circulated until [REDACTED] 2023, 452 days after submission. It was reported that the opinion had to be substantially rewritten by her panel members prior to its issuance. The other two

██████████ ultimately were reassigned to other judges after extremely lengthy delays.

There have also been a number of cases which had to be reassigned after lengthy delays:

- Judge Newman assigned herself ██████████ ██████████, a pro se submitted case, on ██████████ ██████████, 2020. The case was reassigned to ██████████ on ██████████, 2022, after it had been pending for 624 days. After reassignment to ██████████, the case was resolved [within one month].
- Judge Newman assigned herself ██████████ ██████████, an argued case, on ██████████, 2020. The case was reassigned to ██████████ on ██████████, 2021, after it had been pending for 380 days.
- Judge Newman assigned herself ██████████ ██████████, a pro se submitted case, on ██████████ ██████████, 2022. The case was reassigned to ██████████ on ██████████, 2023, after it had been pending 374 days. After reassignment to ██████████, the case was resolved in just three days.
- Judge Newman assigned herself ██████████ ██████████, a pro se submitted case, on ██████████ ██████████, 2020. The case was reassigned to ██████████ ██████████ on ██████████, 2021, after it had been pending for 302 days. After reassignment to ██████████, the case was resolved in a couple of weeks.
- Judge Newman assigned herself ██████████ ██████████, an argued case, on ██████████ ██████████, 2022. The case was reassigned to ██████████ ██████████ on ██████████, 2022, after it had been pending

269 days. After reassignment, the case was resolved [within three months].

- Judge Newman assigned herself ██████████ ██████████, a pro se submitted case, on ██████████, 2022. The case was reassigned to ██████████ on ██████████, 2023, after it had been pending 126 days. After reassignment, the case was resolved [within two months].

I have also been made aware of allegations that Judge Newman has exhibited inappropriate behavior in managing staff by permitting one of her law clerks to exhibit unprofessional and inappropriate behavior which has been reported to Judge Newman. On Monday, March 6, 2023, one of her staff reported that Judge Newman also disclosed sensitive medical information about ██████████ to her staff.

Based on the above-identified information, I conclude that there is probable cause to believe that Judge Newman's health has left her without the capacity to perform the work of an active judge and that her habitual delays are prejudicial to the efficient administration of justice. *See* Judicial-Conduct Rule 4(b)(2) and Commentary (indicating that habitual delay in a significant number of cases may constitute cognizable misconduct).

I have attempted to see whether a satisfactory informal resolution could be reached to resolve these concerns. I met with Judge Newman for approximately 45 minutes where I outlined the concerns about her inability to perform the work of an active judge and the concerns which had been expressed about her mental fitness. She refused to consider senior status saying that she was the only person who cared about the patent system and innovation policy. She acknowledged only that she was slow in resolving cases. Despite half of the active judges of the court having

expressed their concerns to Judge Newman or trying to express their concerns, Judge Newman appears unwilling to participate in any informal resolution. I provided Judge Newman with a copy of this order on March 17, 2023 and informed her that it would not be docketed until March 24, 2023 so that she would have an opportunity to review it. I again requested that we attempt to resolve these concerns by informal resolution. She refused to meet with me and has not responded to my repeated attempts to discuss informal resolution.

In summary, the accumulation of these concerns, having been expressed to me by judges and court staff, give me probable cause to identify a complaint against Judge Newman regarding disability and misconduct to begin the review process provided in Rule 11 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.

IT IS SO ORDERED.

3/24/2023

Date

/s/ Kimberly A. Moore
Kimberly A. Moore
Chief Judge