

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.

ORDER

In its October 21, 2024 Order (at 8), the Special Committee required Judge Newman to produce, among other things, the records reviewed by Dr. Filler upon which he based his opinion that “none of Judge Newman’s medical conditions revealed by her records are ultimately contributory or relevant to her current mental state, and none suggest cognitive decline or neurological deficits,” Filler Report at 18. The Committee gave Judge Newman until December 2, 2024 (six weeks) to provide the records reviewed and relied upon by Dr. Filler. October 21, 2024 Order at 8. On December 2, 2024, Judge Newman filed a Response (December 2 Response) stating that absent immediate public release of (1) her December 2 Response, (2) her September 25, 2024 Motion for Reconsideration (which attached the Filler Report), and (3) the October 21, 2024 Order—all of which were filed and remain under seal in this proceeding—she will unilaterally file versions of these documents, with her own redactions, publicly as part of her appeal in the D.C. Circuit on December 5, 2024 (in just three days’ time). December 2 Response at 2 n.1.

The Committee issues this Order to remind Judge Newman and her counsel of the duties imposed and processes prescribed regarding confidentiality by the terms of the Judicial Conduct and Disability Act of 1980 (the Act) and by the Rules for Judicial-Conduct and Judicial-Disability Proceedings (the Rules). As explained in our May 3, 2023 Order, the Act unambiguously states “all papers, documents, and records of proceedings related to investigations conducted under this chapter shall be confidential and shall not be disclosed by any person.” 28 U.S.C. § 360(a). This extends to filings made by Judge Newman or her counsel as well as orders of the Committee, like the October 21, 2024 Order, which is clearly designated “UNDER SEAL (NON-PUBLIC ORDER).” Similarly, Rule 23(b) unambiguously states that “[t]he consideration of a complaint by a chief judge, a special committee, a judicial council or the Committee on Judicial Conduct and Disability is confidential” and that “[i]nformation about this consideration must not be publicly disclosed by any judge or judicial employee.” Rule 23(b)(1).

The December 2 Response cites Rule 23(b)(7), but that provision does not permit unilateral disclosure by a subject judge. The Rule permits disclosure of information where both the subject judge and the chief judge consent in writing. The Rule does not compel consent by the chief judge, whose duty is not only to ensure, as appropriate, that the identity of witnesses is protected but, more broadly, to preserve the integrity of ongoing processes under the Act. A serious concern is that a misleading public impression would be created by piecemeal release of information, without completion of the evaluation process. There is no adverse party, and the Committee—acting as investigators but also serving as part of the evidence-evaluating decision-making body—could not provide appropriate context without making premature public assessments. For such reasons, as explained in our July 8, 2024 Order, the Chief

Judge plans to continue the practice of releasing materials in relevant batches, not piecemeal or on a document-by-document basis, and even then, not until the materials have been reviewed for necessary redactions consistent with the obligations imposed by the Rules and Commentary.

IT IS ORDERED THAT:

(1) In accordance with 28 U.S.C. § 360(a) and Rule 23(b)(1), Judge Newman and her counsel shall refrain from publicly disclosing information about the Committee's ongoing consideration of, and investigation into, the complaint identified against Judge Newman; and

(2) Violation of this Order or Rule 23 by counsel may result in an appropriate sanction. Rules of confidentiality exist to protect the integrity of the process, witnesses, complainants, and the subject judge. The Committee requires adequate time to consider this request. These documents are, until further notice, under seal. Any filing of these documents in other courts must be under seal.

SO ORDERED: December 3, 2024.