

United States Court of Appeals for the Federal Circuit

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

IN RE COMPLAINT NO. 23-90015

Before the Judicial Council of the Federal Circuit

PER CURIAM.

ORDER

Pursuant to the Judicial Conduct and Disability Act (“JC&D Act”), 28 U.S.C. § 353, and Rule 17 of the Rules for Judicial Conduct and Judicial Disability Proceedings, the Special Committee of the Federal Circuit Judicial Council in this matter submitted a Report & Recommendation to the Council on July 28, 2025 (“2025 R&R”). This matter arises from a complaint identified pursuant to Rule 5. Pursuant to 28 U.S.C. § 354 and Rule 20, the Judicial Council has considered the Special Committee’s Report & Recommendation and Judge Newman’s response (“Response”).¹

Upon such consideration, for the reasons explained below, the Judicial Council adopts the Special Committee’s

¹ The Council sees no need for oral argument in this matter. Pursuant to Rule 20(a), Judge Newman was provided an opportunity to submit argument in writing to the Council. Her counsel also presented oral argument to the Special Committee, and the transcript of that argument was attached to the Special Committee’s Report & Recommendation. *See* 2025 R&R Ex. 20.

conclusion that Judge Newman is engaged in continuing misconduct and the Committee's recommendation that Judge Newman be sanctioned for that misconduct. For the same reasons, the Council denies Judge Newman's request to vacate or modify the Order dated September 6, 2024. For one year from the date of this Order, Judge Newman shall be suspended from hearing cases. The Judicial Council appreciates the thorough, thoughtful work of the Special Committee. The Committee has, at all times, acted in strict compliance with the JC&D Act. As with its prior Reports and Recommendations, the 2025 R&R exhaustively details and analyzes all of Judge Newman's contentions. While Judge Newman argues that the Committee misapprehended facts, the Council has determined that resolution of newly-arising fact disputes is not necessary to our conclusions—that Judge Newman has engaged in misconduct and should be sanctioned with a further suspension. The robust record, developed over several years, which was sufficient to support a finding of misconduct and imposition of a sanction in 2023 and 2024, remains so, even as the record has been expanded in the past year. Judge Newman has offered no persuasive arguments to the contrary. The conflicts among the experts do not detract from, but rather strongly support, the fundamental fact that has been apparent for two years: there is ample justification for the Special Committee's order that Judge Newman take the standard neuropsychological exams. *See* 2025 R&R.

A

It is important to reiterate what issue is actually before the Council. Based on a substantial evidentiary record, the Special Committee determined in 2023 that, for the Committee to determine whether Judge Newman suffered from a cognitive impairment that renders her unable to perform the functions of her judicial office, it was necessary for Judge Newman to undergo medical examinations,

including neuropsychological testing with a neuropsychologist chosen by the Committee. The Committee ordered her to undergo that testing. When she refused, the Committee focused this proceeding on the question of whether her refusal constituted misconduct and any appropriate sanction for that misconduct. The Committee ultimately recommended a finding that Judge Newman had committed misconduct and recommended a one-year suspension from hearing cases. *See* Report & Recommendation of July 31, 2023 (“2023 R&R”) at 109–11. This Council agreed, and the Judicial Conduct and Disability Committee affirmed the Council’s decision and the sanction for misconduct. *See* Judicial Council Order of Sept. 20, 2023 at 71–73; JC&D Committee Order of Feb. 7, 2024. In 2024, the Council expressly adopted the Special Committee’s Report & Recommendation dated July 24, 2024 (“2024 R&R”), and renewed the suspension for a further year, as a sanction for misconduct. Judicial Council Order of Sept. 6, 2024 at 1–2.

The question before the Council remains the same and is limited to whether Judge Newman’s refusal to undergo the ordered testing warrants the sanction imposed on September 6, 2024, and imposition of a further sanction now. In particular, the question is whether any changed circumstances or new evidence—including matters raised by Judge Newman’s Motion for Reconsideration and her new evidence—warrant a new finding that there is no longer an adequate justification for the Special Committee’s order requiring the specified neuropsychological testing. *See* Judicial Council Order of Oct. 1, 2024 at 1 (referring Judge Newman’s Motion for Reconsideration to the Special Committee). Nothing in this more robust record changes our view regarding the necessity of the ordered neuropsychological testing.

As prior orders in this proceeding have made clear, there was always a strong basis in evidence for the Committee’s order requiring Judge Newman to undergo

neuropsychological testing. *See, e.g.*, Judicial Council Order of Sept. 20, 2023 at 18–39. The Council adopts and incorporates by reference here, in their entirety, its prior orders of September 20, 2023, and September 6, 2024, and the analysis and findings in those orders. Those orders detail the employee accounts of confusion, inability to retain simple instructions, memory loss, anger, agitation, and apparent paranoia on Judge Newman’s part, along with her own emails demonstrating the same.

No new material presented in this proceeding since September 6, 2024—including Judge Newman’s materials in support of her Motion for Reconsideration—changes the Council’s conclusions that the order for neuropsychological testing was and remains justified and that Judge Newman’s refusal to cooperate with that order constitutes serious misconduct.

Along with her Motion for Reconsideration, Judge Newman introduced the report of Dr. Aaron Filler who, in addition to interviewing Judge Newman, performed a CT perfusion scan on Judge Newman. Even Dr. Filler does not dispute that the CT perfusion scan he performed cannot rule out all forms of cognitive impairment or dementia. Filler Tr. at 217:9–22. The other experts uniformly testified that such brain scans are not standard in the field today for assessing cognitive impairment. *See* Noble Rep. at 13 (“CT Perfusion is not recommended nor used as a standard tool in assessments of cognitive impairment.”); Johnson Rep. at 5 (“The use of Perfusion CT to exclude cognitive dysfunction is not considered as a reasonable standard of care in clinical practice.”); DeRight Rep. at 6 (“Perfusion CT is not used to diagnose cognitive impairment.”); Rothstein Tr. at 110:19–111:11 (explaining that a brain scan is “not used to assess cognitive impairment”). It is not disputed that the ordered neuropsychological testing is what remains the standard in the field for assessing cognitive capacity. *See* Noble Rep. at 18 (“Neuropsychological

testing remains standard practice in clinical and research settings to determine the nature and extent of cognitive problems.”); DeRight Rep. at 13 (“Neuropsychological assessment is a cornerstone of measuring cognitive abilities and is the expected avenue for exploring potential cognitive deficits as they relate to a potential workplace problem.”), *id.* (such testing “is the industry standard for the objective assessment of cognitive functioning”), *id.* (“Standardized neuropsychological assessment is essential to assess the degree and profile of cognitive dysfunctions for clinical diagnosis.”). There is no dispute that the diagnostic criteria for assessing cognitive impairment in standard references, such as the DSM-5-TR, likewise involve neuropsychological testing. *See, e.g.*, DeRight Rep. at 10; DeRight Tr. at 48:12–15. Even Dr. Filler acknowledges that the neuropsychological tests are the “standard” “routine” tests. *See* Filler Supp. Rep. ¶¶ 17–18. In contrast, there is no evidence in the record that the CT perfusion scan is utilized as part of any standard guidelines or criteria for assessing cognitive impairment. *See* Noble Rep. at 13 (“there are no guidelines anywhere recommending its use in the diagnostic workup of these conditions”); DeRight Rep. at 6–12.

The foregoing suffices for us to confirm the need for the ordered neuropsychological testing. It is worth adding that even Judge Newman’s own expert, Dr. Rothstein, explained the value of neuropsychological testing, which he described as “a several-hour test” that “really can look at a much more expansive version of what’s happening in terms of Judge Newman’s thinking and memory.” Rothstein Tr. at 113:16–20; *see also id.* at 95:9–12 (agreeing that “neuropsychological evaluation would’ve been helpful”); *id.* at 111:16–19 (same). And he testified that he actually recommended to Judge Newman that she should undergo the testing. Dr. Rothstein testified:

Q: Okay. Did you suggest to Judge Newman that she should undergo neuropsychological testing?

A: Yes, I did.

Q: And you recommended to her that she should do that?

A: Yes, I did.

Id. at 112:1–3, 112:13–15.

The Council has reviewed the entirety of the record, which includes more than a dozen employee affidavits, emails from Judge Newman herself, six expert reports and three supplemental expert reports, depositions of all six experts and Judge Newman’s medical records. We remain firmly convinced that the ordered neuropsychological testing is necessary to determine whether Judge Newman is capable of performing the duties of her office. Judge Newman has not presented any new material to undermine the justification for the ordered neuropsychological testing or to eliminate the need for it.² In short, none of the material presented by Judge Newman affects the Council’s analysis on the only points before the Council, namely, whether there continues to be a reasonable basis for the Committee

² In her Response, Judge Newman argues that her medical records “confirm that Judge Newman does not suffer from any cognitive problems.” Resp. at 22. We do not agree with this broad assertion regarding the disclosed medical records. Those records undisputedly include notations of “memory impairment” and forgetfulness. *See* PN_000003; PN_000130; PN_000256; PN_000265; PN_000275; PN_000707; PN_001133; PN_001359; PN_001406; PN_001412; PN_001418; PN_001437; PN_001690. We make no findings about these medical records other than that they support rather than refute the need for the ordered neuropsychological testing.

to order neuropsychological testing; whether Judge Newman's refusal to cooperate by undergoing that testing constitutes continuing misconduct; and what an appropriate sanction would be.

B

Several arguments raised by Judge Newman in her Response warrant further comment.

1. Judge Newman suggests that she never had an opportunity to challenge the factual accounts concerning interactions with her presented by Court staff members in affidavits filed in 2023. Resp. at 8 n.6. That is incorrect. The affidavits were provided to Judge Newman in 2023 precisely so that Judge Newman could challenge "the basis for the Committee's conclusion that Judge Newman should be ordered to undergo" neuropsychological testing. Special Committee Order of June 1, 2023 at 5. Judge Newman declined to challenge any of the factual accounts and instead, "[w]ithout delving into the minutia of these affidavits," dismissed them as "petty grievances." Letter of July 5, 2023 at 15. As the Council stated in its Order of September 20, 2023, in responding to a similar argument: "Judge Newman was given an opportunity to dispute the employee statements. She did not take it." Judicial Council Order of Sept. 20, 2023 at 7; *see also* JC&D Committee Order of Feb. 7, 2024, at 23 ("Judge Newman has never specifically disputed any of the staff accounts"); 2024 R&R at 17 ("Judge Newman has never disputed the testimony of the staff members, and she does not do so now.").

2. As for the substance of Judge Newman's new challenge to the 2023 staff affidavits, that challenge focuses on just one subset of the affidavits, and the narrow challenge she presents is on its face unsound. Specifically, she argues for the first time that the increasing difficulties she experienced using the Court's computer system—as documented

in affidavits from employees in the Court’s IT Department—were actually attributable to a change that occurred when the Court introduced a new sign-on system that involved a USB device and multi-factor authentication (MFA). *See* Resp. at 11. Judge Newman relies on an email from the IT Department dated February 22, 2023. *Id.* Ex. C. The affidavits from IT employees, however, describe a troubling decline in Judge Newman’s ability to remember how to use the computer system long before that date, and are not limited to failing to remember how to navigate logging on with the new system. *See, e.g.*, Affidavit of [REDACTED] ¶ 8 (Apr. 24, 2023) (“[REDACTED] Apr. 24 Aff.”) (IT employee [REDACTED] describing “significant mental deterioration” in Judge Newman that he had observed “[o]ver the last year”—long before March 2023); Affidavit of [REDACTED] ¶ 2 (May 23, 2023) (another IT employee similarly reporting that “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”).

3. Judge Newman criticizes the Special Committee for the speed with which it produced a Report & Recommendation after receiving her brief on July 21 and hearing oral argument on July 24. Resp. at 3–4. According to Judge Newman, that speed indicates a lack of due process. *Id.* That assertion is meritless. The Special Committee conducted a thorough and lengthy process to evaluate a substantial volume of new expert submissions and extended the timetable of its consideration more than once to accommodate Judge Newman’s requests for additional process—including accepting a rebuttal report from Judge Newman’s expert and conducting six expert depositions. *See* 2025 R&R at 2.

Due to the extensive process the Special Committee provided at Judge Newman’s request, by the time the Special Committee received Judge Newman’s brief on July 21,

2025, the Committee had an expert report from Judge Newman’s new expert (Dr. Filler) for 10 months, three new expert reports from experts retained by the Council for five months, a rebuttal report from Dr. Filler and supplemental reports from two of the Council’s retained experts for over three months, and depositions of all experts for between one and two months. With all that information, the Committee was well positioned to begin its analysis of the expert materials and Judge Newman’s arguments in her Motion for Reconsideration before receiving Judge Newman’s final brief. And the Report & Recommendation itself shows that the Committee thoroughly responded to points raised both in Judge Newman’s brief and at oral argument. *See, e.g.*, 2025 R&R at 12 n.1, 17 n.2, 44, 52–53 n.12, 64, 66, 68 n.19, 69, 75, 77–78, 80, 85–87.

The Committee was also under a statutory obligation to “expeditiously file a comprehensive written report” on its investigation with the Judicial Council. 28 U.S.C. § 353(c). The Committee’s effort to meet that obligation by preparing its Report & Recommendation promptly cannot be characterized as evidence of a lack of due process.

4. Judge Newman renews her argument that due process concerns require transfer of this proceeding to another circuit, because the members of this Judicial Council are familiar with Judge Newman as a colleague. *See* Resp. at 1; *see also* Resp. to 2024 R&R at 30. The Council and the Special Committee have previously rejected those arguments. *See* Judicial Council Order of Sept. 20, 2023 at 6–7, 43–45; 2025 R&R at 78–80; 2023 R&R at 64–76, 86–92. We do so again—and emphasize that, because of Judge Newman’s refusal to allow this investigation to move forward, this proceeding remains at a stage at which resolution of fact disputes about her cognitive state is unnecessary. We also note, as we have repeatedly before, that transfer will be reconsidered once the ordered testing

is completed and the proceeding turns to the ultimate question of disability.

We have previously considered each of Judge Newman's arguments, have done so again, and will, as we must, continue to engage with such issues if they arise in the future. And while we cannot prejudge any transfer request that might someday be presented under circumstances that are not before us now, we recognize that if it becomes necessary to resolve fact disputes relating to Judge Newman's cognitive state (such as the question of disability, as opposed to the necessity of testing), a transfer request would require a different analysis.

At this stage, given the narrow questions before the Council, the circumstances relating to Judge Newman's transfer request remain the same as they were in prior years. As in 2023 and in 2024, the question before the Council is whether there is a reasonable basis for the Special Committee to order neuropsychological testing and whether a sanction for Judge Newman's refusal to cooperate with that order is warranted. The Council is not being asked to decide whether Judge Newman suffers from a disability.

To be sure, there is now a more extensive record before the Council. That record includes, at Judge Newman's request, expert reports and depositions as well as some of Judge Newman's medical records. Nothing about the particular issues presented in Judge Newman's Motion for Reconsideration, nor the new evidence presented, changes our prior analysis.

Accordingly, consistent with our analysis over the past two years, the Council rejects Judge Newman's request for a transfer, without prejudice to renewing that request at a later stage of the case in the event that circumstances change. In particular, if Judge Newman complies with our

Orders (as we hope she will), the task of evaluating the results of the required neuropsychological examinations may require resolution of fact disputes, which might lead to a different analysis on transfer. But the mere possibility that such future circumstances might recommend transfer does not create a meritorious due process concern today.

5. Judge Newman again asserts that renewing the sanction suspending her from hearing cases for an additional year effectively removes her from office. That is plainly not the case given that Judge Newman has it within her power to end the suspension at any point by simply cooperating with the lawful orders of the Special Committee and undergoing the required neuropsychological testing (at which point she can again request transfer, as we have stated repeatedly). *See* Brief of Judicial Council, D.C. Circuit Appeal, at 28 (explaining that “the keys to [unlock] her suspension are in her pocket”). Judge Newman cannot, by her own intransigence in refusing to cooperate with an investigation under the JC&D Act, turn a limited, temporary order sanctioning her for misconduct into an unconstitutional removal from office. Under that approach, the entire self-policing mechanism Congress created, which includes expressly giving Judicial Councils and Special Committees the authority to order cooperation from judges and places judges under an obligation to cooperate with such investigations, could be set at nought by any judge determined to ride out an initial suspension from hearing cases. Judge Newman has entirely within her control a clear path to obviate the misconduct: she can just take the ordered neuropsychological examination, which is noninvasive and takes a single day.

6. Judge Newman argues that the Special Committee and the Council should abandon efforts to secure neuropsychological testing and should simply find that she is disabled based upon the information currently available, Resp.

at 24–25, even though she vigorously denies that such a finding would be accurate, *id.* at 2. The Council cannot simply announce that Judge Newman is disabled as an expedient in order to reach a final decision in this matter. Pursuing that course would require a majority of the judges on this Council to sign a “certificate of disability” certifying to the President of the United States that Judge Newman has a disability that renders her unable to discharge the duties of her office. *See* 28 U.S.C. § 372(b). That certification would have the significant consequence of enabling the President (if he agrees with that assessment) to appoint an additional Article III judge to this Court. *See id.* On the current record, in the absence of the testing the Council continues to find is necessary to arrive at a definitive assessment of Judge Newman’s potential disability, the Council cannot make such a certification.

7. Finally, Judge Newman asserts that results from neuropsychological testing cannot affect the outcome here in any event. According to Judge Newman, her three experts have examined her and concluded that she does not suffer from a disability, so no matter how bad the results of the neuropsychological testing may be, they would merely amount to “conflicting evidence” and the conflict would “necessarily” have to be “resolved in Judge Newman’s favor.” *Resp.* at 24. We are aware of no authority to support the proposition that any conflict in evidence demands a finding against a disability (even if Judge Newman is correct that the applicable standard of proof is clear and convincing evidence).

The Council stresses, as it has in the past, that litigants before this Court deserve to have confidence that the judges ruling on their matters do not suffer from a cognitive impairment that may affect the resolution of 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 derail the process by refusing to cooperate.

Accordingly, pursuant to 28 U.S.C. § 354(a)(1)(C) and (a)(2)(A)(i) and Rule 20(b)(1)(D) and (b)(1)(D)(ii), the Council hereby **ORDERS**:

- (1) Judge Newman shall not be permitted to hear or participate in any cases, at the panel or en banc level, for a period of one year beginning with the issuance of this Order, subject to consideration of renewal if Judge Newman's refusal to cooperate continues after that time and to consideration of modification or rescission if justified by an end of the refusal to cooperate.
- (2) The Special Committee shall retain jurisdiction of this matter.

SO ORDERED: August 29, 2025.

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

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

IN RE COMPLAINT NO. 23-90015

Before the Judicial Council of the Federal Circuit

PER CURIAM.

STATEMENT OF RIGHTS UNDER RULE 20 AND 21

Pursuant to Rule 20(f) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, the Judicial Council notifies Judge Newman that she is entitled to a right to review of the Council's decision as provided in Rule 21(b). The Council will transmit the order and memoranda incorporated by reference in the order to the Committee on Judicial Conduct and Disability for review in accordance with Rule 21. Judge Newman may file a Petition for Review with the Committee on Judicial Conduct and Disability. The Rules regarding the deadline and page limits for the Petition for Review may be found in Rule 22.