

United States Court of Appeals  
for the Federal Circuit

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

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IN RE COMPLAINT NO. 23-90015

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

PER CURIAM.

**ORDER**

By order of March 24, 2023, Chief Judge Moore appointed a special committee (the Committee) to investigate and report its findings and recommendations with respect to a complaint identified against Judge Newman pursuant to Rule 5 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules). The complaint was based, *inter alia*, on a concern that Judge Newman may be “unable to discharge all the duties of office by reason of mental or physical disability.” 28 U.S.C. § 351(a).

On May 16, 2023, the Chief Judge and unanimous Judicial Council, acting pursuant to Judge Newman’s request

under Rules 23(b)(7),<sup>1</sup> and 23(b)(8)<sup>2</sup>, ordered that all previous orders of the Committee and Judge Newman’s responses be publicly released (with appropriate redactions to protect the identity of witnesses). *See* May 16, 2023 Order at 10-12.

Since May 16, the Committee’s investigation has proceeded, and new orders have been issued and new responses received. By letter of June 2, 2023, Judge Newman requested the Chief Judge, pursuant to Rule 23(b)(7), to publicly release all prior non-public orders of the Committee and Judge Newman’s responses. June 2, 2023 Letter from Gregory Dolin, M.D. to The Hon. Kimberly A. Moore, Chief Judge, United States Court of Appeals for the Federal Circuit (June 2 Letter); *see also* May 25, 2023 Letter from Gregory Dolin, M.D. to The Hon. Kimberly A. Moore, Chief Judge, United States Court of Appeals for the Federal Circuit at 3 n.6 (requesting public release pursuant to Rule 23(b)(7)).

Recognizing that the propriety of disclosing materials related to this proceeding depends upon the state of the Committee’s investigation, the Chief Judge referred Judge Newman’s request to the Committee. Having considered

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<sup>1</sup> Rule 23(b)(7) authorizes the Chief Judge to disclose “any materials” from the proceeding to “any person” with the consent of the subject judge. As detailed in the May 16 Order, Judge Newman consented to and expressly requested the release of materials related to these proceedings by letter dated May 10, 2023 to the Committee.

<sup>2</sup> Rule 23(b)(8) authorizes the Judicial Council or Chief Judge to disclose information about the consideration of a complaint “in the interest of assuring the public that the judiciary is acting effectively and expeditiously in addressing the relevant complaint proceeding.” Commentary to Rule 23(b)(8).

the matter, the Committee believes disclosure is appropriate. The Committee believes public disclosure of its recent orders and Judge Newman's responses will not impede the Committee's investigation. Judge Newman has requested disclosure and the Commentary to Rule 23(b)(7) states that "the Chief Judge ordinarily will refuse consent only to the extent necessary to protect the confidentiality interests of the complainant or of witnesses."

The Committee agrees that release of all such orders and letters, including the unanimous June 5 Judicial Council Order is warranted pursuant to Rule 23(b)(8) subject to appropriate redactions.

As before, the Committee reminds Judge Newman and her counsel that the confidentiality requirements imposed by Rule 23 shall remain in effect with regard to all future filings in this matter. Judge Newman and her counsel are free to discuss information that has already been publicly released pursuant to this order and prior orders of the Judicial Council, but they shall remain bound by Rule 23 not to disclose other information about the Committee's consideration of this matter that remains confidential. For example, Judge Newman has received many affidavits from court staff and a deposition transcript all of which remain confidential.

Accordingly,

IT IS ORDERED THAT:

In response to Judge Newman's request, pursuant to Rule 23(b)(7) and 23(b)(8), prior orders of the Committee and the Judicial Council as well as Judge Newman's Letter Responses to date will be publicly released, with appropriate redactions to protect the identity of witnesses;

(2) Judge Newman and her counsel remain bound by Rule 23 and the May 3, 2023 Confidentiality Order with regard to information not publicly disclosed by the Court

such as future orders and filings and affidavits, declarations and deposition transcripts; and

(3) Disclosures by counsel that appear to be in violation of Rule 23, the Confidentiality Order, or this Order may result in issuance of an order to show cause why counsel should not be held in contempt.

SO ORDERED: June 5, 2023.