

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

By order of May 16, 2023, the special committee composed of Chief Judge Moore, Judge Prost, and Judge Taranto (the Committee) ordered Judge Newman to undergo certain neurological and neuro-psychological examinations and to submit certain medical records to the neurologist and also asked Judge Newman to appear for an interview with the Committee. This order repeated, with clarifications, directives (and an interview request) issued by the Committee starting in early April. The May 16 order established a deadline of 9:00 am on May 23, 2023, for Judge Newman simply to respond indicating whether she would agree: (i) to undergo the specified examinations; (ii) to provide the requested medical records; and (iii) to appear for an interview (with the examinations, the provision of records, and interview to occur at later dates). On Saturday, May 20, four days after the May 16 order issued, counsel for Judge Newman submitted a letter seeking a 16-day extension of the May 23 deadline—to June 8. For the reasons explained below, the requested extension is denied, but a

shorter extension is granted until 9:00 am on Friday, May 26, 2023.

Especially in light of the length of time the Committee's orders for neurological and neuro-psychological examinations and for medical records, and the Committee's request for an interview, have been pending, counsel has not provided any sufficient justification for the requested extension. The proffered reasons for the extension are that counsel is traveling abroad in Israel until June 1 and will be busy with family engagements during his trip, that he will also be busy preparing grades for students in courses that he teaches, and that the 7-hour time difference between Israel and Washington, D.C. makes communication with his client more difficult. None of these grounds provides adequate justification for delaying this proceeding.

On April 7, 2023, the Committee first ordered Judge Newman to undergo neurological and neuro-psychological examinations. On April 17, 2023, the Committee first ordered her to provide medical records and requested that she appear for an interview. The examination and records directives were repeated in a May 3 order. Directives to undergo examinations and to provide records and the interview request have thus already been pending for 45 days and 35 days, respectively. And counsel for Judge Newman has been fully aware of those directives and request for at least a month, since April 21, when counsel's organization first entered an appearance in these proceedings. The May 16 order clarifies the earlier orders in limited ways—most notably, by staging the neurological examination directive and by requiring the records to be supplied solely to the neurologist (not the Committee).

As the Committee explained in its order of May 16, the Judicial Conduct and Disability Act declares that the Committee shall "conduct an investigation as extensive as it considers necessary, and shall *expeditiously* file a

comprehensive written report thereon with the judicial council.” 28 U.S.C. § 353(c) (emphasis added). The Senate Judiciary Committee, in its report on the proposed Act, explained that it believed that the proceedings culminating in Judicial Council action on a complaint “should not take more than 90 days in the usual case.” S. Rep. No. 96-362, at 2 (1979). Given that the Committee was appointed on March 24, this proceeding has been underway for almost 60 days already. And the most significant remaining barrier to completing the investigation is the pending question whether Judge Newman will comply with the directives the Committee has issued for the specified examinations and for medical records. Even if Judge Newman agrees to the specified examinations, moreover, it will still take further time to schedule the examinations and receive results. Accordingly, it is important that the Committee keep this process moving forward as expeditiously as possible.

A lengthy extension is particularly unwarranted given the limited nature of the response that must be provided by the deadline. Judge Newman is not being asked to undergo examinations, to provide records (to the neurologist), or sit for an interview by the May 23 deadline set in the May 16 order. Instead, she is merely being asked to indicate, by that deadline, whether she now agrees that she will do those things at a later date. Given the length of time that counsel has already had to consult with Judge Newman on these same matters, additional time is not warranted. And given modern communications methods, the Committee does not believe that a 7-hour time difference presents a substantial barrier for counsel to conduct whatever further consultations may be required with his client to come to a conclusion on whether Judge Newman will cooperate with the directives and request at issue.

The Committee also notes that counsel who is traveling is not the only lawyer representing Judge Newman in this matter. The April 21, 2023 letter from the New Civil

Liberties Alliance was signed by another lawyer, and a third lawyer from the same organization has appeared as counsel in the lawsuit Judge Newman has filed about this proceeding and has responded to press inquiries regarding this Committee's orders.

Finally, counsel's time commitments to academic pursuits suggest only that counsel may not have adequate time to represent clients in time-sensitive proceedings such as this. It provides no basis for the Committee to delay a proceeding that is supposed to be conducted expeditiously.

Accordingly, the request for an extension until June 8 is denied. To allow counsel time to communicate with Judge Newman after this order issues, the Committee grants a limited extension of three days until 9:00 am, Eastern Daylight Time, on Friday, May 26, 2023.

Accordingly,

IT IS ORDERED THAT:

(1) A three-day extension of the 9:00 a.m. May 23 deadline is granted, to 9:00 a.m., Eastern Daylight Time, on Friday, May 26, 2023;

(2) Judge Newman is directed to inform the Committee in writing (email is acceptable) by 9:00 am on May 26, 2023 whether she will comply with the Committee's order of May 16, 2023, and make herself available for the examinations described in that order;

(3) Judge Newman is directed to inform the Committee in writing (email is acceptable) by 9:00 am on May 26, 2023, whether she will provide the Committee's selected neurologist with medical records and a list of current medications as described in the Committee's order of May 16, 2023;

(4) Judge Newman is directed to inform the Committee in writing (email is acceptable) by 9:00 am on May 26, 2023 whether she will make herself available for a video-taped interview with the Committee at 2:00 pm one afternoon between June 6 and June 8; and

(5) Failure to respond by 9:00 am on May 26, 2023, to any of the foregoing may be treated by the Committee as a refusal to cooperate.

SO ORDERED: May 22, 2023.