

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

By order of March 24, 2023, a special committee composed of Chief Judge Moore, Judge Prost, and Judge Taranto (the Committee) was appointed to investigate and report its findings and recommendations with respect to a complaint identified against Judge Newman to the Judicial Council.

In orders dated April 7, 2023, April 17, 2023, and May 3, 2023, the Committee ordered Judge Newman to undergo a neurological evaluation and neuropsychological testing to determine whether she suffers from a disability and ordered her to provide medical records. The unanimous Judicial Council issued its own order on May 3, 2023 supporting the Committee's decision to require the examinations (the evaluation and testing) and the provision of medical records. Judge Newman has not complied with those orders. On May 16, 2023, the Committee provided further explanation of the relevance of the medical records and narrowed its order to require Judge Neman to provide the necessary records directly to the medical provider (no longer requiring such records be provided directly to the Committee) and provided Judge Newman with 30 days in which to provide the records. The Committee again sought that Judge Newman undergo a neurological evaluation and

neuropsychological testing to determine whether she suffers from a disability (such testing to be scheduled at a mutually convenient time in the future). The Committee further explained the nature of this testing (entirely non-invasive), its duration, and the cognitive functions such testing sought to evaluate. The Committee again requested that Judge Newman participate in an interview with the Committee. The Committee requested that Judge Newman inform the Committee by May 23, 2023 whether she would comply with the order and then granted her counsel an extension until May 26, 2023. The Order further informed Judge Newman that “[r]efusal to comply with this Order without good cause shown may result in the Committee seeking to expand the scope of the investigation to include an inquiry into whether Judge Newman’s further noncooperation constitutes misconduct under Rule 4(a)(5).”

Judge Newman responded to the Committee on May 25, 2023, indicating that Judge Newman will not comply with any aspect of the May 16 Order. Specifically, she refused to engage with the ordered neurological evaluation and neuropsychological testing, to produce certain medical records, and to meet with the Committee for a recorded interview.

Pursuant to Rule 13(a) of the Rules for Judicial Conduct and Judicial Disability Proceedings, the Committee has requested that the scope of the investigation be expanded to investigate whether Judge Newman has failed to cooperate in violation of the Rules and whether her failure to cooperate constitutes misconduct. *See* Rule 4(a)(5) of the Rules for Judicial Conduct and Judicial Disability Proceedings (“Cognizable misconduct includes refusing, without good cause shown, to cooperate in the investigation of a complaint or enforcement of a decision rendered under these Rules.”).

Based on this information, there is sufficient cause to believe that Judge Newman has failed to cooperate and thereby committed additional misconduct. Accordingly, the scope of the investigation is expanded to include an investigation into this newly identified matter.

IT IS SO ORDERED.

05/26/2023

Date

/s/ Kimberly A. Moore

Kimberly A. Moore
Chief Judge