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Fed. Circuit Special Committee's Actions Once Again Undermine Due Process for Hon. Pauline Newman

The Hon. Pauline Newman v. Hon. Kimberly A. Moore, Hon. Sharon Prost, Hon. Richard G. Taranto, et al.

Washington, DC (August 4, 2023) – Today, without warning, a Special Committee of the Federal Circuit published documents from their investigation attacking highly-respected veteran circuit judge, the Hon. Pauline Newman. This surprise document drop included a 319-page Special Committee report that falsely accuses her of misconduct and disability. The report recommends that Judge Newman remain barred from hearing new cases, even though the very last page of the report concedes that she passed the cognitive assessment she received.

Chief Judge Kimberly Moore and her colleagues released their report prematurely, undermining Judge Newman's statutory right to respond within 21 days, and preventing the public from being fully briefed. As Judge Newman's counsel, NCLA is disappointed with this latest inappropriate move in a long series of due process shortcuts the Special Committee has taken to force Judge Newman out of her constitutional, lifetime-appointed judicial role.

Judge Newman vigorously disputes the findings and legal conclusions of the Special Committee report, as will become evident when NCLA files her official response to it. The Judicial Council alleged that 96-year-old Judge Newman was mentally incompetent to fulfill her judicial duties, demanding that she submit to neurological testing. Judge Newman was properly tested. She passed. And yet the Special Committee, though none of its members has medical training, still saw fit to question the report's accuracy and legitimacy.

The original sin of this proceeding was removing Judge Newman from hearing cases for an indefinite period before the investigation even began. The 1980 Judicial Conduct and Disability Act does not authorize any such indefinite or pre-investigatory suspension. The procedural shortcomings continued with the Special Committee flouting federal law which requires judges to recuse themselves from proceedings when they have personal knowledge of the facts in dispute. Moreover, similar past investigations of circuit judges have nearly always been transferred to another circuit, but Chief Judge Moore has insisted on keeping this one for herself.

Indeed, because of these ongoing procedural irregularities, two of Moore's predecessor chief judges on the Court, retired Chief Judges [Paul R. Michel](#) and [Randall R. Rader](#) have spoken out separately in opposition to the blatant due process deficits in this case, decrying the disgraceful treatment of Judge Newman and the Court's damaged reputation from this mishandled investigation.

Retired Chief Judge Michel called out the glaring due process problems with the Special Committee:

[T]he Chief Judge and the Special Committee are continuing to act as accuser, investigator, prosecutor, and judge. That would not be acceptable in any other circumstance, and I'm hard-pressed to see how it can be acceptable here. It cuts against the very foundation of due process, as well as raising thorny constitutional concerns. An unfair process risks damaging the legacy of all the current judges agreeing to what appears to be a conflicted process.

Retired Chief Judge Rader said Judge Newman’s colleagues on the Court owe their esteemed fellow judge an apology. He also personally attested to her current competence:

I called [Judge Newman] directly ... [W]ithin five minutes, I could easily and confidently assess that Judge Newman was as mentally sharp and capable as she had been for more than 40 years that I have known her well. Indeed, since that conversation, we have spoken at least once a week at all times of the day and evening. In all of those conversations, including a couple of in person meetings, I have not detected the slightest slippage in her mental acuity. Judge Newman’s current colleagues must have the same opportunities to assess for themselves her abilities. Thus, this prolonged proceeding, especially in the face of her entirely successful cognitive medical examination, becomes even more puzzling.

NCLA released the following statements:

“The Special Committee’s surprise actions undermine public confidence in the Judiciary, and prove, better than any argument that Judge Newman could make, that a transfer of this matter is—and always was—necessary.”
— **Greg Dolin, M.D., Senior Litigation Counsel, NCLA**

“Judge Newman has not yet had an opportunity to respond to it, but the report itself highlights the lack of procedural fairness. The investigation began by removing her from hearing cases, and the Special Committee is acting as witness, prosecutor, and judge at the same time. Basic fairness requires transferring this matter to a neutral circuit.”
— **Andrew Morris, Senior Litigation Counsel, NCLA**

“It is not surprising that the same judges who falsely accused Judge Newman of having a heart attack are unwilling to accept the medical opinion of Newman’s physician that she passed the cognitive assessment he gave her. This tribunal long ago sacrificed any semblance of due process in its concerted effort to keep their famously dissenting colleague off the bench no matter what the medical evidence shows about her competence. This flawed process has indelibly stained the Federal Circuit. If it succeeds, it will jeopardize the independence of all federal judges.”
— **Mark Chenoweth, President and General Counsel, NCLA**

For more information visit the case page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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