

## Federal Circuit Judge's Fitness Under Investigation Could Result in a Long Legal Battle



A panel of Federal Circuit judges is investigating allegations that 95-year-old Judge Pauline Newman is unfit to serve on the bench. The investigation was initiated after Chief Judge Kimberly A. Moore filed a misconduct complaint, citing two serious health events that Newman experienced, including an incident where she fainted following an oral argument and complaints of impairment of cognitive abilities.

While the judges may want to resolve the matter quickly, legal scholars and some lawyers who have examined the process say tricky procedural questions could bog down the probe. The special committee and council will try to proceed as quickly as possible while also ensuring due process and fairness, said Arthur Hellman, a law professor at the University of Pittsburgh and an expert on the structure of the federal appellate court system and judicial ethics.

However, the investigation has hit a snag as Newman reportedly refused to undergo medical testing, despite steps taken by the committee to have her do so. The standoff could be challenging to resolve, as one of the open questions is whether the Judicial Council has the authority to order a mental examination of a judge who is resisting, said Hellman. This raises questions about the process, including forced medical examination, which hasn't been tested in the courts. He added that Newman's case could open the door for such a challenge.

The purpose of the complaint process is to get a result more likely to be accepted by all sides, so internal tensions would be a good reason to request a transfer if there is a feeling among Newman's supporters that there is bad blood between Moore and Newman, said Hellman. Transferring the case to another federal appeals court is still possible, although a chief judge would typically request a transfer before an investigative committee is formed.

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The impact of the investigation on the judges' reputations might not be known until a final determination is reached through the investigation, said Joshua Landau, senior counsel of innovation policy at the Computer & Communications Industry Association. Regardless of the outcome, the judicial working relationships may already be a casualty of this fight, as public knowledge of the orders may result in less collegiality at the circuit and less willingness to be open with one another.

Given the uncharted territory that the complaint ventures into, the situation has created uncertainty among practitioners and academics. While the special committee and council will try to proceed as quickly as possible, there may be prolonged delays due to tricky procedural questions. The standoff between Newman and the committee's attempts to have her undergo medical testing could also further complicate matters.

As the investigation into Judge Newman's fitness continues, the legal community will be closely watching how this case develops. It could have significant implications for judicial ethics and the functioning of the federal appellate court system.