

Federal Circuit Judges Respond to 96-Year-Old Colleague's Lawsuit Over Probe



In a recent development concerning the fitness of 96-year-old Federal Circuit Judge Pauline Newman to continue serving on the bench, the judges responsible for investigating her have filed a response to her lawsuit aimed at blocking the probe. The judges argue that the internal actions of their special committee, formed by the US Court of Appeals for the Federal Circuit, are not subject to judicial review. They claim that each court holds the constitutional authority to enforce discipline short of removing a judge.

The special committee, led by Chief Judge Kimberly A. Moore, initiated an investigation into Judge Newman's fitness and misconduct in April, citing concerns raised by court staff regarding her health. In response, Judge Newman filed a lawsuit seeking to prevent the probe from moving forward.

The committee, in its filing, emphasized that Judge Newman's legal claims are jurisdictionally deficient and without merit. They contend that while Judge Newman has made significant contributions to the legal field, her claims do not hold water.

The situation escalated further when the committee recommended a year-long suspension for Judge Newman due to her refusal to cooperate with the investigation. Although the deadline for Judge Newman's response to the committee's report has passed, no new developments have been made public. The recommended suspension cannot be implemented until the full Federal Circuit Judicial Council votes on it. In the meantime, Judge Newman has been excluded from participating in new panels since the start of the investigation.

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Central to the July hearing on Judge Newman's compliance with the probe were her cardiac health and an examination conducted by a neurologist, which she submitted to the committee. A redacted transcript of this hearing was released in August, albeit over Judge Newman's objections.

Judge Newman has garnered support from her defenders, including Fifth Circuit Judge Edith H. Jones, who described her as a "brilliant, capable jurist." Jones criticized the committee's investigation as "inexplicable." Dr. Ted Rothstein, a neurologist at George Washington University's School of Medicine & Health Sciences, who examined Judge Newman and cleared her to return to the bench, expressed dissatisfaction with a key finding in the committee's 111-page report.

As the legal proceedings continue, Judge Newman's response to the committee's latest filing is expected by October 9 or 21 days after the Judicial Council issues an order regarding the committee's August 4 report, whichever comes later.

The committee's filing on Friday asserted that the district court has no jurisdiction to hear the case. They cited the Judicial Conduct and Disability Act, under which they are conducting their investigation, which explicitly limits the ability of other courts to intervene in such matters. According to the act, "all orders and determinations" made under its purview are "final and conclusive and shall not be judicially reviewable on appeal or otherwise," except in specified cases, such as the Judicial Council reviewing the chief judge's orders.

Furthermore, the committee argued that even if judicial review were permitted, it would be inappropriate for a single district [judge to review the decisions of another federal](#) court body. They contended that such actions should only be reviewed by a tribunal with appellate jurisdiction over those decisions, rather than a court of original jurisdiction.

In addition to seeking the dismissal of Judge Newman's lawsuit, the committee urged the court to reject her request to be reinstated and allowed to hear new cases during the ongoing proceedings. They argued that Judge Newman's "constructive-impeachment claim" asserting that her suspension infringes on Congress' exclusive authority to impeach federal judges cannot succeed.

The committee emphasized that Judge Newman can still perform routine judicial functions related to cases she presided over before the investigation. They noted that she continues to serve as an Article III judge with full tenure and salary. They also encouraged her to work on pending case assignments.

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Ultimately, the committee pointed to various factors the district court must consider when deciding whether to grant Judge Newman's request. They argued that Judge Newman would not be harmed by not hearing specific cases, while her alleged erratic performance and behavior could burden the Federal Circuit and the public if the suspension were overturned.

The Justice Department represents the Federal Circuit Judicial Council and the member of the special committee, while the New Civil Liberties Alliance represents Judge Pauline Newman.

Don't be a silent ninja! Let us know your thoughts in the comment section below.

