United States Court of Appeals for the Federal Circuit

~~UNDER SEAL (NON-PUBLIC ORDER)~~

IN RE COMPLAINT NO. 23-90015

REPORT & RECOMMENDATION OF THE SPECIAL COMMITTEE

July 28, 2025

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Before MOORE, *Chief Judge*, PROST and TARANTO, *Circuit Judges*.

PER CURIAM.

REPORT & RECOMMENDATION

This Special Committee Report & Recommendation addresses both Judge Newman's Motion for Reconsideration and the Committee's Order to Show Cause regarding whether the Judicial Council should renew its order of September 6, 2024, which suspended Judge Newman from participating in cases for a period of one year.

On September 25, 2024, Judge Newman filed a Motion for Reconsideration asking the Judicial Council to reconsider its order of September 6. Judge Newman relied primarily on the expert report of Dr. Aaron Filler, a neurosurgeon who examined Judge Newman and had a computed tomography (CT) perfusion scan performed on Judge Newman's brain. Dr. Filler asserted that the CT perfusion scan objectively ruled out any cognitive impairment for Judge Newman and, in combination with his examination and the reports submitted earlier by Dr. Ted Rothstein and Dr. Regina Carney, conclusively established that there was no need for the neuropsychological testing the Committee had ordered in 2023.

The Committee has expended considerable time, effort, and resources to evaluate Judge Newman's submissions and to accommodate all of Judge Newman's requests for extensive process. This included retaining three experts to assist the Committee in evaluating Dr. Filler's claims, granting permission for Judge Newman to file a rebuttal report from Dr. Filler, conducting depositions of six expert witnesses, receiving additional briefing from Judge Newman, and hearing oral argument. The Committee reviewed all of Judge Newman's briefing, nine reports or supplemental reports from the six experts, all of their testimony, and a large set of Judge Newman's medical records that the experts deemed relevant.

The Committee finds that this extensive record leaves no room for doubt: Judge Newman, now 98 years old, needs a full neuropsychological battery of tests in order for the Committee to determine whether she is capable of performing the functions of an active federal judge. Among the critical points established after thorough consideration of Judge Newman's motion and the new evidence are the following:

- Judge Newman's own expert neurologist who she knew for thirty years, Dr. Rothstein, testified in his deposition that, when he evaluated Judge Newman in July 2023, he recommended that she have the more detailed neuropsychological battery of tests—the Committee and Judicial Council have likewise been requesting the more detailed neuropsychological battery of testing. In previous briefing, Judge Newman has failed to accurately present Dr. Rothstein's conclusions.
- Dr. Rothstein also acknowledged in his deposition that he did *not* reach a "definitive" conclusion on whether Judge Newman was fit for the duties of her office because she did not have the neuropsychological assessment that he recommended. Dr. Rothstein

testified there was "some hesitation on my part" and it was "fair" to say he "didn't make a definitive statement" that Judge Newman had no cognitive impairment.

- Dr. Carney testified that she did not perform a fitness for duty evaluation to determine whether Judge Newman was capable of doing her work and instead evaluated Judge Newman for a disability. She explained that a fitness for duty exam would require much more extensive neuropsychological testing. Dr. DeRight explained that the neuropsychological testing that Dr. Carney acknowledged was necessary to determine Judge Newman's fitness for duty was the very testing this Committee has asked for since the outset of these proceedings.
- All three experts retained by the Committee—a neurologist who specializes in cognitive impairments associated with aging, a neuropsychologist, and a neuroradiologist—explained, in detail, that, contrary to the assertions made by Judge Newman's expert, Dr. Filler, it is not an accepted diagnostic approach in the field to use a CT perfusion scan to determine whether or not an individual suffers from a cognitive impairment. The articles that Dr. Filler cites to support his claims about the role of CT perfusion do not, in fact, provide support for his sweeping claims. In short, the Committee finds that Dr. Filler's assertion that a CT perfusion scan can reliably rule in or rule out cognitive impairment for an individual does not provide a reliable basis for the Committee to conclude that neuropsychological testing for Judge Newman (which is the standard in the field) is unnecessary.
- Dr. Filler's credibility as an expert is further undermined by several additional factors. He assured the

Committee that he had conducted a "detailed review" of Judge Newman's medical records and that they contained no records suggesting any cognitive impairment and, specifically, no records showing she "has ever . . . had a fainting episode." Both assertions were not true. The records show that "memory impairment" was listed on Judge Newman's "problem list" and that she was hospitalized for fainting episodes—*twice*. Dr. Filler also asserted that his expert testimony has never been excluded, but that also is not true. His testimony has been excluded by several courts, including on the grounds that his opinions were "too speculative to present to the jury" and that his opinions were "conclusory and not properly supported."

- Experts retained by the Committee have also confirmed that affidavits provided by court employees show concerning longitudinal changes in Judge Newman's cognition—especially in her inability to remember how to perform tasks that used to be routine for her—and that this information indicates that neuropsychological testing to obtain an objective assessment of Judge Newman's cognitive capacity is warranted.

- Judge Newman's medical records demonstrate that in April 2022 (the year before this process began) her medical providers documented "memory impairment" as a problem on her "problem list," and "forgetfulness."

- According to her medical records, Judge Newman's law clerk—the same clerk who pled the Fifth Amendment in response to nearly every question asked at her deposition—has increasingly assumed a caregiver role in Judge Newman's medical treatment. Judge Newman's medical providers refer to

the law clerk as her "POC [Point of Contact]," "assistant," "friend," "caregiver," "caretaker," "emergency contact," and even as her "legal guardian." According to Judge Newman's medical records, as time has progressed, the law clerk's role in Judge Newman's medical care has increased from arranging visits, to attending visits, to being the person who provides much of the medical history even when Judge Newman is present.

- Judge Newman's medical records demonstrate that, when Judge Newman provided her own medical history to Dr. Carney in 2023 and Dr. Filler in 2024 without the help of her law clerk, she made significant errors. In August 2023, Judge Newman told Dr. Carney that she fainted once in April 2023 but was not admitted to the hospital. In the four months from April to August, Judge Newman had apparently forgotten that, in reality, she *was* admitted to the hospital through the Emergency Department. Records show that she was moved to a room on a different floor, spent the night, and was not discharged until around 4 pm the next day. By August 2024, she told Dr. Filler that she had *never* had a fainting episode. In other words, just one year later, she no longer recalled fainting at all. Her medical records reveal at least two instances of fainting that resulted in hospitalization.

The Committee originally found that the more than a dozen affidavits from court employees from nearly every court department (along with Judge Newman's own emails) detailing serious concern about Judge Newman's cognitive state justified ordering Judge Newman to undergo a battery of neuropsychological tests administered by an independent medical provider selected by the Committee. The expanded record leaves no doubt that the neuropsychological testing ordered by the Committee from the

outset is necessary. Years of litigating this dispute could have been avoided if Judge Newman had acknowledged in 2023 that the neurologist she selected—Dr. Ted Rothstein—recommended that she have the more detailed neuropsychological testing and if she had followed his advice and acquiesced in having that testing.

The following Report & Recommendation details the Committee's findings which lead it to conclude: (i) that there is a reasonable basis to order full neuropsychological testing by a provider selected by the Committee; (ii) that Judge Newman's continued refusal to cooperate with the Committee's investigation by undergoing that testing constitutes continuing misconduct; and (iii) that the Judicial Council should renew the sanction of suspending Judge Newman from hearing cases for a period of one year.

I. RELEVANT PROCEDURAL BACKGROUND

This matter arises from a complaint identified by the Chief Judge pursuant to Rule 5 on March 24, 2023. The procedural history of the matter has been set out in detail in prior orders of the Committee and of the Judicial Council.

On September 6, 2024, the Judicial Council issued an order renewing Judge Newman's suspension from hearing cases for one year and explained that the suspension is "subject to consideration of renewal if Judge Newman's refusal to cooperate continues." 2024 Judicial Council Order at 2.

On September 25, 2024, Judge Newman filed a Motion for Reconsideration of the September 6 Order, attaching an expert report from Dr. Aaron Filler. Dr. Filler is an accomplished neurosurgeon. He examined Judge Newman in August 2024 and she underwent a computed tomography (CT) perfusion scan performed at George Washington University Hospital. His report asserted that, after the CT perfusion scan, along with his examination,

"there is no reason or need for additional testing." Filler Rep. at 41 (attached as Exhibit 7).

On October 1, 2024, the Judicial Council referred the Motion for Reconsideration to the Committee for consideration. The Committee sought disclosure of information that Dr. Filler had relied on in producing his report. *See* Oct. 21, 2024 Order at 6. In addition, given that Dr. Filler's report made assertions about the capabilities of CT perfusion scanning to definitively identify or rule out cognitive impairment, the Committee retained two experts to assist it in evaluating Judge Newman's Motion for Reconsideration.

The Committee retained Dr. James Noble, who is a Professor of Neurology at Columbia University Irving Medical Center. Dr. Noble is also appointed in the Taub Institute for Research on Alzheimer's Disease and the Aging Brain and the Gertrude H. Sergievsky Center, and he is the Clinical Core Leader and Co-Director of the National Institute on Aging sponsored by Columbia University Alzheimer's Disease Research Center.

The Committee also retained a neuropsychologist, Dr. Jonathan DeRight. Dr. DeRight is a psychologist Board Certified in clinical neuropsychology who treats patients for a wide variety of cognitive and psychiatric mental health conditions. As part of his regular practice, Dr. DeRight conducts fitness for-duty evaluations on aging professionals, including judges, physicians, and attorneys.

Counsel for the Committee asked Dr. Noble and Dr. DeRight to evaluate both Dr. Filler's report and material on which he relied, including the earlier reports submitted by Dr. Ted Rothstein and Dr. Regina Carney.

As Dr. Noble was preparing his report, he identified what he believed were significant errors in Dr. Filler's report. To secure a further opinion specifically addressing Dr. Filler's claims concerning the uses of CT perfusion

scans and the accuracy of certain statements made by Dr. Filler about particular images from Judge Newman's CT perfusion scan, the Committee retained a third expert, Dr. Jason Johnson. He is a neuroradiologist—a radiologist whose special expertise involves reading imaging studies of the brain—and an Associate Professor of Radiology and Biomedical Imaging at Yale University, where he also serves as Chief of Neuroradiology.

On February 7, 2025, the Committee provided Judge Newman with reports prepared by Dr. Noble, Dr. DeRight, and Dr. Johnson and issued an order summarizing some of those experts' criticisms of the reports of Judge Newman's experts. The Committee proposed providing Judge Newman an opportunity to provide a written response to these reports by April 8, 2025, and offered Judge Newman the opportunity to request additional process.

On February 20, 2025, Judge Newman filed a response in which she sought depositions of the experts and indicated that she intended to file a "rebuttal report" from Dr. Filler. On February 26, 2025, the Committee extended the schedule to accommodate Judge Newman's request for additional process. The April 8 deadline for Judge Newman's written response was lifted, a period from April 1 through May 23 was designated for the completion of depositions, a deadline of March 10 was set for Dr. Filler's rebuttal report, and a new deadline of 30 days after the last deposition was set for Judge Newman's written response.

On March 3, 2025, Judge Newman sought an extension until March 24, 2025 for Dr. Filler's rebuttal report. Mar. 3, 2025 Ltr. at 1. As counsel for Judge Newman acknowledged in that letter, "this extension likely necessitates a brief delay in depositions." *Id.*

Accordingly, on March 5, 2025, the Committee further extended the schedule to accommodate Judge Newman's requests. The Committee extended the deadline for Dr. Filler's rebuttal report to March 24, 2025 and extended the

period for expert depositions to run from April 14 to May 30, 2025, which was later extended again to April 28 to June 20, 2025.

On May 19, 2025, the Committee issued an order establishing the schedule for the remaining proceedings. The Committee explained that the Judicial Council's current order suspending Judge Newman from hearing cases for one year would expire on September 6, 2025, and that the Committee would soon need to start the process to consider whether that order should be renewed. May 19, 2025 Order at 4. The issues to be addressed in considering any renewal, however, necessarily overlapped with the issues and new expert evidence presented on the pending Motion for Reconsideration. *Id.* Accordingly, the Committee determined that it would combine its consideration of the pending Motion for Reconsideration with consideration of renewing Judge Newman's suspension from hearing cases. *Id.* at 4–5. The Committee issued an Order to Show Cause directing Judge Newman to address why the current suspension should not be renewed and ordered Judge Newman to provide her response in a combined brief by July 21, 2025. Judge Newman also requested oral argument which was held on July 24, 2025.

II. FINDINGS AND CONCLUSIONS

In her combined brief (July 21, 2025 Br.), Judge Newman argues that the reports from her three experts—Dr. Rothstein, Dr. Carney, and Dr. Filler—demonstrate that she is fit to serve as a federal judge and warrant a conclusion that no further sanction for her refusal to comply with the Committee's orders is justified. None of her arguments is persuasive.

A. Judge Newman's Expert Reports Do Not Establish Good Cause for Her Refusal to Comply with the Medical Examination Orders.

Judge Newman rests her arguments primarily on the reports provided by her three experts. For the reasons explained below, the Committee does not find that the opinions of those experts obviate the need for the ordered neuropsychological testing.

1. Dr. Ted L. Rothstein

Multiple factors lead the Committee to conclude that Dr. Rothstein's evaluation of Judge Newman does not provide support for Judge Newman's argument that she does not need neuropsychological testing.

a. Dr. Rothstein Recommended that Judge Newman *Should* Have Neuropsychological Testing.

First and foremost, Dr. Rothstein testified at his deposition that, when he examined Judge Newman two years ago, he himself recommended that Judge Newman "*should"* have the more detailed neuropsychological testing, as the Committee has ordered. In his report, Dr. Rothstein offered the ambiguous statement that Judge Newman "could have a more detailed neuropsychological evaluation as part of her neurological assessment." Rothstein Rep. at 2 (attached as Exhibit 6). But at deposition, Dr. Rothstein revealed that he had affirmatively recommended to Judge Newman that she should have neuropsychological testing. Rothstein Tr. at 95:3–6 (noting that he "had requested" "neuropsychological evaluation") (attached as Exhibit 16). He testified it would have "been helpful in terms of assessing her function" had Judge Newman "had the neuropsychological evaluation that I had requested." *Id*. Counsel asked Dr. Rothstein point blank

whether he did in fact recommend neuropsychological testing, and Dr. Rothstein said yes:

> Q: Okay. Did you suggest to Judge Newman that she should undergo neuropsychological testing?
>
> A: Yes, I did.
>
> ***
>
> Q: And you recommended to her that she should do that?
>
> A: Yes, I did.

Id. at 112:1–3, 112:13–15. He also agreed that a neuropsychological evaluation would have been helpful. *See id.* at 95:9–12; *id.* at 111:16–19 (same). Dr. Rothstein even emphasized the value of neuropsychological testing, which he described as "a several-hour test" that "really can look at a much more expansive version of what's happening in terms of Judge Newman's thinking and memory." *Id.* at 113:16–20.

The Committee finds Dr. Rothstein's admission that he recommended further neuropsychological testing for Judge Newman to be highly significant. Dr. Rothstein was the first expert to evaluate Judge Newman. Judge Newman, through counsel, made Dr. Rothstein and his purported conclusion that there was no need for further testing the cornerstone of her arguments defending her refusal to undergo testing. On July 5, 2023, counsel for Judge Newman characterized Dr. Rothstein's findings as showing "Judge Newman's 'cognitive function is sufficient to continue her participation in her court's proceedings'" and that it should "obviate the need for any further testing." July 5, 2023 Ltr. at 2. Judge Newman's response brief to the July 31, 2023 Special Committee Report & Recommendation again asserted that any questions about Judge Newman's need for additional testing were "resolved" by Dr. Rothstein's examination. Aug. 31, 2023 Br. at 55. A year later, on July 10,

2024, counsel for Judge Newman's counsel told this Committee at oral argument:

> None of her physicians have suggested any need for any additional – or, any mental exams at all.
>
> ***
>
> Neither Dr. Rothstein nor Dr. Carney nor any of [Judge] Newman's treating physicians have ever suggested that she is in a position where a mental competency exam would be advisable.

July 10, 2024 Oral Arg. Tr. at 34:11–13, 35:19–22 (attached as Exhibit 19). Those assertions were not accurate.[1] In fact, Dr. Rothstein—the very first physician to evaluate Judge Newman in connection with this proceeding—recommended to Judge Newman that she should have additional neuropsychological testing, as the Committee has ordered.

Dr. Rothstein also agreed that the ultimate conclusion in his report concerning Judge Newman's fitness for duty was significantly limited. Dr. Rothstein's report states this conclusion: "My findings would support her having cognitive function sufficient to continue her participation in her court's proceedings." Rothstein Rep. at 2. At deposition, it was pointed out to Dr. Rothstein that this was "a limited conclusion" and that he was "not saying, 'I have definitively established that she has the cognitive function to do this.'"

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[1] At oral argument on July 24, 2025, counsel for Judge Newman disputed whether Dr. Rothstein had actually recommended neuropsychological testing and insisted that Dr. Rothstein had said only that Judge Newman *could* have such testing, not that she *should* have it. July 24, 2025 Oral Arg. Tr. at 6:22–9:4 (attached as Exhibit 20). That is not accurate. At deposition, Dr. Rothstein noted that "I had requested" a "neuropsychological evaluation," he stated squarely that "I recommended a neuropsychological assessment," and when asked whether he had recommended a neuropsychological assessment, he said, "Yes, I did." Rothstein Tr. at 95:3–6, 113:15, 112:13–15.

Rothstein Tr. at 112:22–113:4. In response, Dr. Rothstein acknowledged that there was "some hesitation on my part," and that it would have been helpful to have "a larger body of information" and "that's why I recommended a neuropsychological assessment." *Id.* at 113:10–15. When asked whether the absence of that additional information was "why you said only that your findings would support her having cognitive function, but you didn't make a definitive statement," Dr. Rothstein responded: "I think that's fair." *Id.* at 114:12–15.

In short, Dr. Rothstein did not believe that his evaluation and report "obviated" the need for additional neuropsychological testing, nor did he believe that he had definitively resolved questions about Judge Newman's fitness for duty as a judge. Dr. Rothstein thought Judge Newman should have additional neuropsychological testing, as ordered by the Committee.

b. Dr. Rothstein did not administer a valid MoCA test.

Judge Newman's reliance on Dr. Rothstein's report is further undermined by the fact that Dr. Rothstein's deposition revealed that the sole cognitive test he administered to Judge Newman—the Montreal Cognitive Assessment screening test or MoCA—was not administered in a standard fashion and he therefore did not obtain a valid score.

The Committee noted in its July 31, 2023 Report & Recommendation that Dr. Rothstein appeared to have scored the MoCA test incorrectly. 2023 R&R at 99–103. The MoCA is typically scored out of a total of 30 points, with five points assigned to three questions on the visuospatial/executive subpart: one point for following a trail, one for copying a cube, and three points for drawing a clock with the hands pointing to a time specified by the examiner. These three questions require the ability to draw. If the patient cannot draw, the evaluator can administer a

partial MoCA scored out of a possible 25 points. *Id.* Dr. Rothstein stated he administered a "partial" MoCA to Judge Newman due to her fractured wrist, which prevented her from holding a pen. His report indicated that Judge Newman was unable to complete the trail-following or cube-copying questions. Rothstein Rep. at 2. Yet he scored her MoCA out of 28 points, apparently giving her three points credit for the clock-drawing question. As the Report & Recommendation pointed out, if Judge Newman was unable to draw a cube, she also could not have drawn a clock. 2023 R&R at 102.

During his deposition, Dr. Rothstein revealed that he "made an executive decision" to use an oral modification for the clock-drawing question. Rothstein Tr. at 79:22, 80:5–12. This modification transformed the clock-drawing exercise into an oral question asking the subject where the hands on a clock would be to reflect a time of 3:45. *Id.* at 81:20–22. He admitted that this modification is entirely his own invention and that he has used it only two or three times in his more than 30 years of practice. *Id.* at 84:15–19 (acknowledging using the modification "two or three times in the time you've been practicing medicine"), 87:18–20 ("Q: [The oral modification] is something that you devised yourself? A: Yes."), 90:10–13 ("Q: . . . [T]his verbal modification . . . is your creation; is that fair? A: I have created it."). Dr. Rothstein conceded that he is "not aware of any study" that validates his oral modification. *Id.* at 90:20–91:1.

Both Dr. Noble and Dr. DeRight testified that Dr. Rothstein's modified method of administering the MoCA is not valid. Noble Tr. at 298:20–22 (attached as Exhibit 14); DeRight Tr. at 136:14–18 (attached as Exhibit 13). The MoCA, Dr. DeRight explained, is a "standardized" test and must be administered "in the same way every time" so "one result can be equally compared to another." DeRight Tr. at 134:3–6; *see also id.* at 45:11–15, 136:14–137:6. Dr. Noble

had never heard of any clinician modifying the MoCA in this fashion. Noble Tr. at 299:1–3. Neither had Dr. DeRight. DeRight Tr. at 137:4–6. Moreover, the oral modification of the clock-drawing test does not test the same cognitive domains as the standard question. As Dr. Rothstein acknowledged, when the patient has to draw the clock, the question tests "immediate memory" because "the subject has to remember the time that you've asked them to put on the clock" while taking time to draw the clockface. Rothstein Tr. at 93:18–22.

At a minimum, Dr. Rothstein's report should have disclosed that he administered the MoCA in this nonstandard, idiosyncratic fashion. As Dr. Noble explained, "any deviation from the use and application of a standardized instrument should have been made obvious in any medical . . . report like this." Noble Tr. at 299:15–300:6.

Without Dr. Rothstein's oral modification to the MoCA, Judge Newman would not have received credit for the clock-drawing question and her score would have been 21 out of a possible 25 points. As the Committee explained in its 2023 Report & Recommendation, the MoCA website provides a formula to convert a score out of 25 for a person who cannot complete the questions that require drawing into a score on a scale of 30. Under that formula, Judge Newman's score of 21/25 points converts to 25/30—which suggests mild cognitive impairment. *See* 2023 R&R at 103 & Ex. 9. Dr. Noble and Dr. DeRight both reached the same conclusion. Noble Rep. at 5–6 (attached as Exhibit 3); DeRight Rep. at 27 (attached as Exhibit 1). Dr. Rothstein himself agreed at his deposition that if Judge Newman were not given three points based on his idiosyncratic, oral version of the clock-drawing exercise, her score would convert to a 25 out of 30 based on the conversion formula provided on the MoCA website. Rothstein Tr. at 101:5–102:19. And Dr. Rothstein acknowledged that this score is not "in

the normal range" and instead indicates "slight mild cognitive impairment." *Id.* at 102:20–22.

c. Additional factors undermine the reliability of Dr. Rothstein's report as a basis for dispensing with the ordered testing.

Dr. Rothstein's report also suffered from additional flaws that the Committee finds undermine the reliability of any conclusion that Judge Newman did not need further testing—even if (as Judge Newman claimed) Dr. Rothstein had reached that conclusion.

First, the Committee believes that Dr. Rothstein understated the significance of the memory impairment that Judge Newman demonstrated on the partial MoCA that was administered. Dr. Rothstein described Judge Newman's failure to remember four out of five words on the delayed recall subpart of the MoCA as merely a "slight limitation in immediate memory" and reported that her "cognition is otherwise completely normal." Rothstein Rep. at 2. As Dr. Noble explained, that characterization understated the significance of Judge Newman's one-out-of-five score. Dr. Noble explained that the most common pattern in clinical findings of mild cognitive impairment and early Alzheimer's disease is "forgetting what was just learned" and, "[i]n practice, this finding alone represents a major concern and indicates the need for a further evaluation." Noble Rep. at 9. Dr. DeRight also disagreed with Dr. Rothstein's characterization and found that Judge Newman's score on this subpart was "more in line with groups diagnosed with cognitive impairment" than a healthy control population. DeRight Rep. at 27. When considered "in conjunction with the collateral source information contained within the affidavits" from court employees, Dr. Noble concluded that a "diagnosis of mild cognitive impairment is even more strongly suggested." Noble Rep. at 9. Given the other issues identified in Dr. Rothstein's report, the Committee credits the analysis of Dr. DeRight and Dr. Noble.

Second, Dr. Rothstein apparently did not review the affidavits gathered by the Committee and he did not seek any other information about Judge Newman's current functioning from other collateral sources. As Dr. DeRight pointed out, "[c]onsidering such collateral source information is standard procedure in an evaluation for cognitive impairment." DeRight Rep. at 22; *see also* Noble Rep. at 5. Dr. Rothstein apparently did consider an article by one of Judge Newman's former clerks, Professor Andrew Michaels, purporting to evaluate Judge Newman's opinions. *See* Rothstein Rep. at 1; Rothstein Tr. at 56:17–20. As Dr. DeRight has explained, however, Judge Newman's opinions do not provide a good basis for evaluating her current cognitive state, because there is no way to know the extent to which they reflect her work and the extent to which her clerks have assisted her. *See* Noble Tr. at 65:9–71:14. Moreover, an evaluation of such work product is not collateral source information. That information comes from someone who has routine daily experience with a person and observes the person's functioning from day to day. *See id.* Dr. Rothstein did not have and did not seek out any such information.

Third, Dr. Rothstein's examination and evaluation process was somewhat cursory. Dr. Rothstein explained that it took him a total of one hour to take Judge Newman's medical history, perform a neurological examination, administer the MoCA, and write his report. Rothstein Tr. at 26:6–13. Before seeing Judge Newman, he reviewed only medical records available to him in the George Washington University system and was not aware of items in her medical records such as the inclusion of memory impairment on her medical problems list. *Id.* at 73:12–75:7.[2] At his

[2] The assertion in Judge Newman's July 21, 2025 Brief that Dr. Rothstein "reviewed [Judge Newman's] medical records," July 21, 2025 Br. at 10, fails to acknowledge these significant limitations on the records he reviewed.

deposition, he testified he would have wanted to know more about that memory impairment had he known about it. *Id.* at 71:9–18, 75:5–7.

The Committee finds that Dr. Rothstein's testimony does not support a conclusion that Judge Newman does not need a full neuropsychological battery; he candidly admitted that he recommended that Judge Newman *should* undergo the neuropsychological testing.

2. Dr. Regina M. Carney

Several factors lead the Committee to conclude that Dr. Carney's report and her evaluation of Judge Newman do not provide persuasive support for Judge Newman's assertion that there is no need for additional neuropsychological testing.

a. The 3MS screening test used by Dr. Carney does not rule out the need for the ordered additional neuropsychological testing.

To start, Dr. Carney relied primarily on another cognitive screening test that takes only a few minutes to complete—a Modified Mini-Mental State Exam (3MS). According to the creators of the test, the 3MS was not designed "as a screening tool for dementia," and "many of the items in the . . . 3MS are not sensitive for detecting dementia in its early stage" and are better suited for "monitoring the progression of dementia to its middle and late stages." Evelyn Teng & Helena Chui, *Manual for the Administration and Scoring of the Modified Mini-Mental State (3MS) Test* (1996) at 2 ("3MS Manual"); *see also* Lei Feng et al., *The Modified Mini-Mental State Examination Test: Normative Data for Singapore Chinese Older Adults and Its Performance in Detecting Early Cognitive Impairment*, 53 Sing. Med. J. 458 (2012) (concluding the 3MS "has limited value in detecting early cognitive impairment; tests with better performance should be considered in clinical practice").

As Dr. Noble explained, the 3MS is "often insensitive to early changes in cognition specifically in highly educated and accomplished persons." Noble Rep. at 10. "Simply put, very smart and accomplished people like Judge Newman can do well on cognitive screening examinations, even when important, meaningful, ongoing cognitive changes are happening, and these are only revealed on more in-depth neuropsychological assessments." *Id.* Dr. DeRight echoed that view. He explained that the 3MS is "a coarse cognitive screening measure that is insensitive to effects of education and intelligence." DeRight Rep. at 29. At his deposition, when asked to explain why the 3MS was "not the proper diagnostic tool" for this situation, he explained that "this is the kind of test that's used in nursing homes. That's the level of decline that someone is [in] that they're going to perform poorly on this test." DeRight Tr. at 81:16–82:1; *see also id.* at 82:14–17 ("[A] 3-MS score that's not impaired does not necessarily give someone a clean bill of cognitive health with regard to the fitness for duty complaints."); *id.* at 83:13–14 ("[I]t's a[n] insufficient amount of information to answer a question."). As Dr. DeRight summarized, a screening test like the 3MS is "wrong a lot of times, and that's just the – the nature of it." *Id.* at 85:19–20.

Even if the 3MS were taken at face value, Dr. Rothstein's MoCA showed significant issues with Judge Newman's immediate memory. She failed to remember four out of five words that were read to her minutes earlier. Rothstein Rep. at 2; *see also* Noble Rep. at 9 (explaining the MoCA showed "meaningful memory changes which should have prompted at least a consideration of MCI [mild cognitive impairment] and warranted further workup including neuropsychological testing"); DeRight Rep. at 27–28 (explaining the MoCA showed "significant problems with memory recall" and provided "documented evidence of memory problems that indicate the need for further

testing"). At best, the MoCA and 3MS suggest conflicting results and, taken together especially with the other evidence of record including the affidavits and Judge Newman's own emails, do not provide a reliable basis for concluding that comprehensive neuropsychological testing is not warranted.

b. Dr. Carney explained she did not perform a fitness for duty evaluation of Judge Newman which would have required a more detailed battery of neuropsychological tests.

Dr. Carney's reliance on the 3MS test is further undermined by her testimony effectively conceding that what is really needed to determine whether Judge Newman is fit for duty is more in-depth neuropsychological testing. Dr. Carney explained a "fitness for duty evaluation" would require more extensive testing using different instruments. *See* Carney Tr. at 44:5–48:3 (attached as Exhibit 18). For example, to evaluate Judge Newman's fitness for duty with respect to issues related to stamina, Dr. Carney would have considered a "battery of tests [that] is quite lengthy." *Id.* at 45:9–16. To evaluate Judge Newman's fitness for duty with respect to issues related to complex decision making, Dr. Carney would have considered "a variety of different tests." *Id.* at 46:2–10. And to evaluate Judge Newman's fitness for duty with respect to cognitive ability for decision making, Dr. Carney admitted she "likely would have administered other instruments" than the 3MS. *Id.* at 47:19–48:3. As Dr. DeRight explained, what Dr. Carney was describing was neuropsychological testing. DeRight Tr. at 152:8–22.

c. Dr. Carney's rationales for dismissing collateral source information from affidavits are not persuasive.

Unlike Dr. Rothstein, Dr. Carney reviewed the affidavits gathered by the Committee. Her report, however, failed to provide any analysis to explain why the accounts of concerning behavior in those affidavits did not suggest the need for comprehensive neuropsychological testing. Dr. Carney reported Judge Newman's own characterization of the information in the affidavits as people "saying I'm grouchy and my staff have been leaving," and Judge Newman's assertion that "I've been arguing with the IT staff because they took my [secretary's] computer two or three months ago." Carney Rep. at 3 (alteration in original) (attached as Exhibit 9). Dr. Carney also reported that Judge Newman "had no specific recollection of a negative event or experience that might have given rise to the complaint." *Id.*

Simply repeating Judge Newman's characterizations did not provide a persuasive basis for Dr. Carney to conclude that the affidavits did not show behavior that warranted further evaluation. Dr. Carney acknowledged having reviewed multiple affidavits from court employees detailing troubling interactions with Judge Newman that suggest significant mental deterioration including memory loss, confusion, lack of comprehension, paranoia, anger, hostility, and severe agitation. Carney Tr. at 91:15–103:14, 110:19–117:2; *see also* Carney Exs. B–G (court employee affidavits shown to Dr. Carney during deposition). Dr. Carney did not testify that Judge Newman herself provided any satisfactory explanation for these incidents, or that she really disputed the incidents at all. Instead, Dr. Carney acknowledged that Judge Newman seemed "a little dismissive" of the interactions in the affidavits and that "the two sides of the story were – did not line up exactly." Carney Tr. at 107:15–108:8. That is consistent with the

fact that, throughout these proceedings, Judge Newman has never disputed the employee accounts of her behavior in the affidavits. Instead, as the Committee has described, Judge Newman has treated the affidavits dismissively.[3]

Dr. Carney also did not meaningfully engage with the information in the affidavits and Judge Newman's own emails. At deposition, Dr. Carney tried to explain away the affidavits describing multiple episodes of confusion or apparent memory loss as due to a "major transition in the way that files were handled" in the Court's computer system. *Id.* at 117:7–20. But on further questioning Dr. Carney acknowledged that the affidavits from IT personnel actually made clear that Judge Newman was forgetting how to accomplish the very same tasks with the same system that she formerly knew how to do for years. *Id.* at 131:3–135:17. As [redacted], an Information Technology Office (ITO) employee, said, "Judge Newman requests ITO's assistance significantly more than anyone else at the court. . . . Many of these requests are the result of Judge Newman not being able to remember where she saved a file or email or Judge Newman forgetting the steps to remotely access into the

[3] *See, e.g.*, 2023 R&R at 4 ("These affidavits were provided to Judge Newman on June 1 and the details in them have not been disputed by Judge Newman. Instead, Judge Newman dismissively characterizes the concerns raised by staff as 'minutia[e]' and 'petty grievances.'" (alteration in original)); 2023 Judicial Council Order at 7 ("Judge Newman was given an opportunity to dispute the employee statements. She did not take it. After being provided copies of all affidavits and the deposition transcript considered by the Committee, Judge Newman made the strategic choice not to 'delv[e] into the minutia of these affidavits.' Instead, she chose to dismiss them as reflecting 'petty grievances' and to argue that 'even assuming' the information in them was true, it 'doesn't even approach probable cause to believe that Judge Newman is mentally and/or physically disabled.'" (alteration in original) (internal citation omitted)); *id.* at 19 ("Judge Newman has never specifically disputed any of the staff accounts, many of which are independently substantiated by Judge Newman's own emails attached as exhibits.").

court's computer network. *These are things that Judge Newman has done for years, and these processes have not changed. She never used to have a problem with these routine tasks, but now seems to repeatedly forget how to do them*." Apr. 24, 2023 [redacted] Aff. ¶ 9 (emphasis added) (attached as Exhibit 23); *see also id.* ¶ 10 ("For instance, on the morning of April 14, 2023, we worked with Judge Newman on the phone for over an hour to again walk her through the steps to log-in remotely. *Again, this is the same simple process she has used for years.*" (emphasis added)).

The affidavits also show that Judge Newman was complaining that her computer was "hacked," her phone was "bugged," and "the Court was interfering with her mail at her residence." Carney Tr. at 112:5–7, 113:19–114:3, 114:11–18 (referencing Carney Tr. Ex. G ([redacted] Aff.)); *id.* at 115:14–20 (referencing Carney Tr. Ex. E ([redacted] Aff.)); *id.* at 241:1–9 (referencing Carney Tr. Ex. D ([redacted] Aff.)). Dr. Carney had no explanation for not addressing those assertions in her report and even acknowledged they could be a source of concern. *Id.* at 126:5–10, 235:2–7. Dr. Carney testified that she asked Judge Newman about Judge Newman's concerns that her computer was hacked and her phone was bugged. *Id.* at 126:22–129:5, 129:17–130:11. According to Dr. Carney, Judge Newman's only explanation was that "they took my secretary's computer" and "a telephone was removed from chambers." *Id.* at 127:20–128:3 (quoting Carney Rep. at 3); *see also id.* at 130:12–15. But that does not explain Judge Newman's complaints about computers being "hacked" or her phone being "bugged." *Id.* at 233:20–235:1 (agreeing Judge Newman's answer about her secretary's computer "didn't really match up" to the complaints about her computer being hacked). As Dr. Noble explained, "it is often the case that people who are forgetful" "get angry when their problems are identified," Noble Tr. at 141:18–20, and Judge Newman's

behavior is "most likely" just "blaming others" for "her own declining capacity" to use her computer and phone independently, Noble Rep. at 9; *cf.* James M. Noble, *Navigating Life with Dementia* 76 (Oxford University Press/American Academy of Neurology 2022) (explaining a person with dementia "who loses a wallet at a store counter might call someone else a thief, although there was no theft").

Dr. Carney sought to discount the affidavits by pointing out they were filed after this proceeding started. Carney Tr. at 122:10–20; *see also* July 21, 2025 Br. at 16. While the affidavits were prepared after this proceeding started because this proceeding prompted the Committee to investigate, they describe troubling behavior stretching back up to at least two years before this proceeding started. *See* Apr. 24, 2023 [redacted] Aff. ¶ 8 ("Over the last year, I've noticed in my interactions with Judge Newman what seems to be significant mental deterioration."); [redacted] Aff. ¶ 6 ("About nine months ago, I witnessed Judge Newman needing to be assisted back to chambers from oral argument.") (attached as Exhibit 26); *id.* ¶ 11 (detailing events spanning from November 16, 2022 to February 20, 2023); *id.* ¶ 14 ("Over the last year, Judge Newman would make statements to me that her phone and computer were being 'bugged' and 'hacked' and that bloggers and the media were out to get her and bring her down."); *id.* ¶ 17 (detailing events spanning from May 11, 2022 to January 19, 2023); *id.* ¶ 18 (detailing events spanning from February 9, 2023 to April 19, 2023); *id.* ¶ 20 (detailing events spanning from October 14, 2022 to March 7, 2023); [redacted] Aff. ¶ 2 ("However, particularly over the last few years, I've noticed a significant increase in Judge Newman forgetting how to perform basic tasks that used to be routine for her.") (attached as Exhibit 22); *id.* ¶ 5 ("Judge Newman was also unable to complete an annual security awareness training two years ago. . . . because she was unable to retain the information from the video.").

d. Additional aspects of Dr. Carney's report and testimony undermine the reliability of her opinions as a basis for dispensing with the ordered testing.

Dr. Carney stated—twice—that Judge Newman accurately recounted her medical history. Carney Rep. at 4 ("Judge Newman was able to recount her own medical history accurately . . ."); *id.* at 5 ("She . . . provides a complete and accurate personal, social, occupational, and medical history. . . ."); *see also* Carney Tr. at 144:17–20. But in describing an episode of syncope (fainting) from April 2023, Judge Newman told Dr. Carney that she "was not admitted" to the hospital. Carney Rep. at 4. Judge Newman's medical records show that assertion was not accurate. Multiple medical records show that she was admitted to [redacted] Hospital for that syncope event on April 19, 2023.

Dr. Carney testified that she had seen medical records showing Judge Newman was admitted to the hospital. Carney Tr. at 139:2–140:4. In light of that knowledge, however, Dr. Carney had no satisfactory rationale to explain why she failed to note the discrepancy between Judge Newman's account (she was not admitted) and the reality (she was admitted)—or why she affirmatively reported that Judge Newman's account of her medical history was accurate. Dr. Carney acknowledged that she knew when she prepared her report that the medical records contradicted Judge Newman's account. *Id.* at 140:5–15. But her only explanation for not noting the discrepancy was that "[i]t didn't occur to me to be of – of incredible importance," and that she did not "expect a non-medical person to understand that being in the hospital for less than 24 hours" could count as being admitted. *Id.* at 140:14–15, 138:1–21. We do not find that explanation satisfactory. A person of ordinary intelligence would understand that when one is moved from the Emergency Room to a hospital room on a

different floor, kept overnight, examined by an occupational therapist the next day, and not discharged until approximately 4:00 PM the next day, one has been admitted to the hospital. *Cf.* PN_001639 (time of discharge).[4]

Second, Dr. Carney testified that she saw that one of Judge Newman's medical records showed that one of her medical providers had noted "memory impairment" on a problem list. But Dr. Carney did not mention that notation in her report, nor did she take any steps to follow up on who made that notation or why.[5] Carney Tr. at 149:9–150:7, 275:11–22.

Dr. Carney acknowledged that "it was important to understand why memory impairment had been noted on a problem list" and that "it would be significant to find out why" that notation was there. *Id.* at 153:6–8, 154:11–14. But she admitted that she did not take steps to follow up on that record. *Id.* at 155:10–14, 275:17–22. She did not know who made that notation in the medical records or why. *Id.* at 153:21–154:4. She testified that she asked Judge Newman about the memory impairment record, but that Judge Newman simply denied having any memory impairment. *Id.* at 153:13–14 ("Well, I asked her, and she

[4] All Bates-stamped medical records are arranged in ascending order in Exhibit 21.

[5] Dr. Carney's testimony about seeing a medical record noting "memory impairment" on a problem list also raises a question whether Dr. Carney actually saw such records when she was preparing her report. Judge Newman's counsel provided to the Committee what he said was the set of medical records that Dr. Carney reviewed, and Dr. Carney executed a declaration affirming that those were the only records she received. *See* Carney Decl. ¶ 8 (attached as Exhibit 10); *see also infra* p. 28–29 n.6. That set of records, however, does not include any of the medical records showing "memory impairment" on a problem list. *See also* DeRight Tr. at 144:18–145:17. In other words, no record noting "memory impairment" on a problem list was included in what Judge Newman's counsel and Dr. Carney said was the set of records provided to Dr. Carney.

said that she didn't have any memory impairment."). Dr. Carney herself explained why such self-reports from a patient are unreliable: Persons "suffering from cognitive decline oftentimes" do not realize it, and this is "a common pattern among people who are experiencing cognitive decline." *Id.* at 80:9–22; *see also* Noble Rep. at 5 ("It is recognized that poor self-awareness of cognitive performance is a common problem in aging populations.").

Dr. Carney explained that she did not mention the "memory impairment" from Judge Newman's medical records in her report because it was later removed from the problem list; thus, Dr. Carney concluded it was no longer a problem. Carney Tr. at 150:20–151:2 ("it did pop up as loss of memory, and then it was removed from the problem list"). The Committee does not believe that provides a sufficient rationale for leaving out any mention of the medical record noting a "memory impairment" from the report. A medical record noting "memory impairment" as a problem for Judge Newman is obviously important to this proceeding. As Dr. Carney acknowledged, moreover, she did not know who took "memory impairment" off the problem list or why. An unexplained change in the list does not eliminate the importance of a record noting "memory impairment" as a problem for Judge Newman.

Dr. Carney's approach to dismissing the "memory impairment" notation stands in contrast to the views provided by other experts. Every other expert in this proceeding to address the issue has agreed that it would be important to know why "memory impairment" was put in Judge Newman's medical records on a problem list. *See, e.g.*, Rothstein Tr. at 72:3–75:7 ("I would want to know on what basis the determination that there was memory impairment was made."); Filler Tr. at 133:1–3 ("[I]t would be helpful" to know whether the memory impairment notation was informed by "qualitative information or any testing"), 134:11–12 ("I agree that it would have been relevant to ask

her about that, why it was there.") (attached as Exhibit 17); DeRight Tr. at 141:11–142:3; Noble Suppl. Rep. at 3 (attached as Exhibit 4).

Third, Dr. Carney testified that, in her view, "Judge Newman's interactions with her counsel would be considered collateral [source] information" and that she "spoke with Mr. Dolin about how his interactions with – with his client went" and she "considered" that information in preparing her report. Carney Tr. at 81:15–82:1. The Committee does not believe that an advocate for a party qualifies as a proper collateral informant for such an evaluation and believes that Dr. Carney's reliance on information from Judge Newman's lawyer in this matter undermines the objectivity and reliability of her opinion.

Fourth, the Committee finds it troubling that Dr. Carney destroyed all of the materials on which she relied in preparing her report before her deposition. Dr. Carney had four, double-sided pages of handwritten notes recording her interview with Judge Newman. *Id.* at 229:14–230:19. She apparently destroyed those notes shortly after preparing her report. Those notes are the only source that the Committee could use to get a clear picture of Judge Newman's actual responses when confronted with affidavits from court employees concerning her behavior. And the notes would obviously be important for evaluating Dr. Carney's assessment of Judge Newman. But those notes have been destroyed and are wholly unrecoverable. *Id.* at 69:2–20, 88:1–15. Similarly, Dr. Carney testified that she retained the medical records that she reviewed for over a year and half (until March 2025) after preparing her report. *Id.* at 251:14–253:13. She explained that she then learned that she would be deposed, reviewed the medical records again, and destroyed them shortly before the deposition. *Id.* at 253:14–254:20.

The destruction of Dr. Carney's notes and the medical records provided to her makes it impossible for the

Committee to assess Dr. Carney's opinions in light of her contemporaneous notations.[6] *Id.* at 251:1–254:16. Because it limits the Committee's ability to test Dr. Carney's opinions against source material, the destruction of the notes and records undermines the extent to which the Committee can rely on Dr. Carney's opinions.

3. Dr. Aaron G. Filler

Judge Newman's primary support for her Motion for Reconsideration—and for her argument that there is no need for the ordered neuropsychological testing—is the report of Dr. Aaron G. Filler. Dr. Filler is a neurosurgeon, an inventor, and a lawyer. He is a board-certified neurosurgeon and completed three fellowships: one in neuroimaging at the University of London in 1995, one in peripheral nerve surgery at Louisiana State University in 1996, and one in complex spine surgery at the University of California, Los Angeles in 1996. He is a fellow of the Royal College of Surgeons of England. He is the co-inventor of an advanced imaging technology known as Magnetic Resonance Neurography. After receiving a degree from Concord Law School, he litigated his own patent infringement actions concerning Diffusion Tensor Imaging, a technology that he claims to have invented, including arguing twice before this Court. On one of his many websites, he holds himself out as "the world's leading expert in treatment of nerve pain." *Meet Dr. Filler*, NERVEMED, https://perma.cc/7997-L4H8 (last visited July 12, 2025).

[6] Although Judge Newman's counsel later provided the Special Committee with the set of medical records he and Dr. Carney said were the record she had received (as they had been transmitted via email), it is not possible to recover the notes Dr. Carney took during her evaluation of Judge Newman. Moreover, as noted above, *see supra* n.5, there are discrepancies between what Dr. Carney reported seeing in that set of medical records and what was actually in the medical records produced from the email.

His evaluation of Judge Newman consisted of three parts: (i) the perfusion CT scan; (ii) a standard neurological examination plus an interview using Dr. Filler's novel cognitive health questionnaire; and (iii) an evaluation that consisted of Dr. Filler presenting to Judge Newman three hypothetical scenarios involving various technologies and patent law principles and assessing her discussion of the issues, in part by comparing her discussion to Dr. Filler's own experience before Judge Newman as an advocate in oral arguments in 2019 and 2022.[7]

Dr. Filler placed primary weight on the perfusion CT scan—a type of medical imaging in which a contrast dye is injected into the bloodstream and a scanner quickly takes a series of images to measure how blood flows through the brain over time. He contends in his report that "there is now a widespread medical understanding that Perfusion CT can be used to identify or rule out the presence of dementia or cognitive impairment on a reliable objective basis." Filler Rep. at 3. Dr. Filler asserts that such brain imaging can determine cognitive function and thus eliminate the need for neuropsychological testing. As he put it in his Report: "There is substantial medical literature that convincingly supports the proposition that high speed perfusion brain imaging supplants the inevitably subjective practice of neuropsychology in the fundamentals of cognitive assessment." *Id.* at 16; *see also id.* at 34 ("Decreases in PCT parameters in the hippocampal area constitute the best modern test for the onset of age or disease related cognitive losses."). Indeed, Dr. Filler disparaged neuropsychological testing as "an outdated methodology, little different

[7] Dr. Filler argued for approximately fifteen minutes in person before a panel that included Judge Newman in *NeuroGrafix v. Brainlab, Inc.*, 787 F. App'x 710, 711 (Fed. Cir. 2019) and for approximately fifteen minutes by telephone in *Filler v. United States*, No. 21-1552, 2022 WL 193199 (Fed. Cir. Jan. 21, 2022).

in design than their 16th century versions, and administered by non-physicians." *Id.* at 36.

According to Dr. Filler, Judge Newman's perfusion CT scan shows "exceptionally high flow bilaterally in the hippocampus which rules out all of the known causes of MCI (mild cognitive impairment) and any dementias." *Id.* at 40. Dr. Filler concluded that "Judge Newman's Perfusion CT test results obviate any need for a neuropsychology test battery." *Id.* at 36; *see also id.* at 41 (asserting that "the Perfusion CT results should be determinative on the principal underlying concerns of the Federal Circuit Judicial Council").

For multiple reasons described below, we find that Dr. Filler's opinions do not provide any reliable basis for the Committee to conclude that there is not a need for Judge Newman to undergo neuropsychological testing, which remains the standard diagnostic tool for assessing cognitive impairment. At his deposition, Dr. Filler significantly qualified the sweeping assertions in his Report about perfusion CT scans and agreed that neuroimaging cannot rule out all forms of cognitive impairment. In addition, his assertions about the use of perfusion CT scans to determine cognitive impairment do not reflect an accepted approach among medical professionals in the field. Importantly, while Dr. Filler insisted that "substantial medical literature" supported his view that perfusion CT imaging can supplant neuropsychological tests, he failed to cite a single article or study supporting that conclusion. Indeed, he misstated important aspects of several articles he cited in his Report. Several other aspects of Dr. Filler's report show idiosyncratic, nonstandard methods for evaluating cognitive impairment that are not accepted in the field and are not reliable. In addition, multiple inaccuracies or misstatements in his report and his testimony further undermine his credibility as an expert witness and support the

Committee's conclusion that his opinions do not provide a reliable basis for decision on the issue presented.

We therefore credit the opinions of Dr. Noble and Dr. DeRight that neuropsychological testing remains the standard and accepted approach for diagnosing cognitive impairment, and that the information available indicates that the proper step for assessment of Judge Newman would have been neuropsychological testing. We also accept their view—which was shared by Judge Newman's own expert, Dr. Rothstein—that Judge Newman should undergo neuropsychological testing.

a. When deposed, Dr. Filler backtracked on his claims about perfusion CT scans.

Dr. Filler asserted in his Report that the Committee does not need any more information about Judge Newman's cognitive health because her favorable result from a perfusion CT scan ruled out all possible forms of dementia or cognitive impairment. At his deposition, however, Dr. Filler conceded that, in fact, perfusion CT cannot exclude all forms of dementia or cognitive impairment. If CT perfusion does not rule out dementia or cognitive impairment, it cannot rule out the need for more information.

In his report, Dr. Filler repeatedly claimed that CT perfusion could definitively rule out *all* forms of cognitive impairment in all cases. "[T]here is now a widespread medical understanding," he claimed, that "[p]erfusion CT can be used to identify or rule out the presence of dementia or cognitive impairment on a reliable objective basis." Filler Rep. at 3. He further argued that Judge Newman's CT perfusion scan "rules out *all* of the known causes of MCI (mild cognitive impairment) and any dementias." *Id.* at 40 (emphasis added). And in his Reply Report, Dr. Filler again claimed that "[p]erfusion CT is newer, but it does work to effectively, objectively, and conclusively,[*sic*] rule out the known forms of dementia." Filler Reply Rep. ¶ 29

(attached as Exhibit 8). The absolute nature of these statements was essential for Dr. Filler's conclusion that a CT perfusion scan eliminates any need for neuropsychological testing. If a favorable CT perfusion result were only another data point to consider, but it did not exclude the possibility of cognitive impairment, it would not undermine the Committee's determination that Judge Newman should undergo neuropsychological testing.

During his deposition, Dr. Filler conceded that his prior, sweeping statements were overly "broad" and should be "qualif[ied]." Filler Tr. at 218:4, 219:4. When confronted with his own statements that perfusion CT could rule out *all* dementias and cognitive impairment, Dr. Filler said, "let's not say all." *Id.* at 217:19. He conceded that his view was that CT perfusion can rule out only some—but not all—dementias and forms of cognitive impairment:

> Q: So I think you just said you are not saying that the imaging can rule in or out all forms of dementia. Is that correct?
>
> A: Yeah, I would say it's the major ones that have been studied, yes.

Id. at 217:4–8. Later, Dr. Filler again acknowledged that CT perfusion can exclude only "many or most of the major types of cognitive impairment." *Id.* at 217:19–21.

That qualification undermines Dr. Filler's central point that Judge Newman's CT perfusion results "obviate any need for a neuropsychological test battery." Filler Rep. at 36. In light of his concession that a favorable result from a perfusion CT scan cannot rule out *all* forms of cognitive impairment, a full neuropsychological test battery remains warranted.

b. Dr. Filler's assertions about the use of perfusion CT to assess cognitive

impairment are not accepted in the field and are not supported by the literature he cites.

Even if Dr. Filler had not made that concession at his deposition, his assertions about the capacity of CT perfusion to diagnose cognitive impairment and his assertion that "it is widely recognized that Perfusion CT scanning . . . can, and do[es], supplant" neuropsychological testing are not persuasive. Filler Rep. at 26. Indeed, Dr. Filler's views concerning the role of CT perfusion appear to be an outlier that lack any significant support. Several factors contribute to the Committee's conclusion.

First, Dr. Noble, Dr. DeRight, and Dr. Johnson all disagreed with Dr. Filler's assertions about perfusion CT scans and provided detailed explanations showing that his claims were not accepted in the field. As explained below, the accepted mechanisms for diagnosing age-related cognitive impairment fall squarely within the areas of expertise of Dr. Noble and Dr. DeRight, and the accepted uses of a brain imaging modality such as CT perfusion are within the expertise of Dr. Johnson as a neuroradiologist.

Dr. Filler is a neurosurgeon and his specialty is not diagnosing age-related cognitive impairment. He admitted at his deposition that he was unfamiliar with the term "fitness for duty evaluations" and stated it was not something he is asked to do. Filler Tr. at 57:10–14. He also admitted at deposition that only about 2–3% of his practice involves diagnosing age-related cognitive impairment. *Id.* at 37:2–5. The vast majority of the patients he sees with potential cognitive complaints have suffered a traumatic brain injury or stroke. *Id.* at 48:17–49:3.

Dr. Noble, by contrast, is a cognitive aging specialist at Columbia University. After graduating from Emory University School of Medicine, he earned a master's degree in cognitive aging and epidemiology at Columbia and

completed a two-year Columbia Department of Neurology fellowship focused on aging and dementia. This fellowship is recognized by the United Council for Neurologic Subspecialties and "is arguably the only specialty recognition for cognitive aging specialists." Noble Tr. at 211:1–5. He is a co-editor of *Merritt's Neurology*, the standard textbook of neurology, for which he authored chapters on "neurologic history and examination" and was "the Diagnostic Tests section editor," covering "all standard diagnostic approaches in clinical neurology, including brain imaging and neuropsychological testing." Noble Rep. at 3. Dr. Noble's work at Columbia "involves a mix of clinical duties and research principally focused on cognitive aging." *Id.* at 2. He currently is "active in clinical care [at] one of the busiest cognitive aging practices in the country serving upwards of 3000 persons annually." *Id.* He explained that, "[o]n a monthly basis I am involved in the evaluation of around 100 individuals for a range of cognitive aging disorders including normal cognitive aging, mild cognitive impairment, and Alzheimer's disease and related dementias." *Id.* at 3.

Dr. Noble rejected Dr. Filler's claims about CT perfusion as containing "major errors." *Id.* at 10. As he explained, "CT Perfusion can only demonstrate that a region of the brain is effectively receiving blood. And even an area of the brain effectively receiving blood can still be dysfunctional." *Id.* at 13. While "brain imaging studies, such as CT or MRI, are routinely used to identify and treat potentially reversible causes of cognitive changes such as tumor or hydrocephalus," "using a brain imaging study to determine a *cause* of memory loss is very different from using a brain imaging study *instead of* a cognitive assessment." *Id.* at 12 (emphases in original). Dr. Noble explained, with extensive citations, that "CT perfusion is not part of any guidelines for use in evaluations of cognitive aging disorders such as MCI or dementia, or for Alzheimer's disease or related dementias." *Id.* at 16–17. Indeed, "[i]n all of

these guidelines which essentially guide practice worldwide for diagnosing cognitive impairment, CT perfusion is mentioned only once, and specifically in the context of diagnosing acute ischemic stroke." *Id.* at 17. He explained:

> CT Perfusion is not recommended nor used as a standard tool in assessments of cognitive impairment, including MCI or dementia. . . . [T]here are no guidelines anywhere recommending its use in the diagnostic workup of these conditions.

Id. at 13. As Dr. Noble summarized: "In my own experience as a specialist in dementia for many years, the approach Dr. Filler took is simply neither a standard nor acceptable clinical diagnostic approach in the field." *Id.* Dr. Noble confirmed at deposition his experience that, "in clinical practice, C.T. perfusion is simply not used to evaluate cognitive impairment." Noble Tr. at 307:2–5.

Similarly, Dr. DeRight, as a neuropsychologist, is routinely called upon to assess age-related cognitive impairments and that is part of his area of specialty. DeRight Rep. at 2. He also rejected Dr. Filler's assertion that perfusion CT can replace standardized cognitive testing. As he explained: "Perfusion CT is not used to diagnose cognitive impairment. It is a tool that can help differentiate among different types of impairment once other methods (e.g., cognitive testing) are used, but it is not a replacement for cognitive testing." *Id.* at 6. Brain imaging has "limited usefulness in early dementia, except to rule out alternative diagnoses, such as hemorrhage, unsuspected lesions, or tumors." *Id.* at 7 (quotation omitted). It is acceptable to use perfusion CT "to differentiate between different types of pathology, but it is not used in a clinical setting to diagnose cognitive impairment." *Id.* at 9. Relying on CT perfusion to exclude a diagnosis as Dr. Filler suggests is "not consistent with scientific principles" and "not a recognized and acceptable way to measure cognitive impairment." *Id.* at 8.

Dr. DeRight also explained that the diagnostic criteria for major or mild cognitive impairment in standard references such as the DSM-5-TR involve neuropsychological testing. *Id.* at 10 n.46 ("As stated in the DSM-5, 'Neuropsychological testing . . . is part of the standard evaluation of NCDs [(neurocognitive disorders)] and is particularly critical in the evaluation of mild NCD."); DeRight Tr. at 48:12–15 ("[T]he [DSM-5] criteria talk about administering standardized neuropsychological testing"). But "[p]erfusion CT is not mentioned in the DSM-5-TR criteria, nor is it used as a stand-alone diagnostic criterion in international consensus criteria used by clinicians to diagnose Alzheimer's disease." DeRight Rep. at 11; *cf.* DeRight Tr. at 56:11–13 ("neuroimaging doesn't have a particularly good role in—in this evaluation").

Dr. Johnson, although not an expert in diagnosing age-related cognitive impairment, is an expert in neuroradiology and understands the various forms of brain imaging that can be performed and their accepted uses. He also rejected Dr. Filler's claims concerning perfusion CT scans. He stated that "[p]erfusion CT has not been demonstrated to be either sensitive (consistently identifying patients with cognitive impairment) or specific (consistently excluding patients without cognitive impairment)." Johnson Rep. at 5 (attached as Exhibit 5). As he put it: "The use of Perfusion CT to exclude cognitive dysfunction is not considered as a reasonable standard of care in clinical practice." *Id.* When he was pressed at deposition about "where" that statement applied and what he meant, he explained "it's simply not done," *anywhere*: "[W]e didn't do it at UCSF [(University of California, San Francisco)], we didn't do it at MGH [(Massachusetts General Hospital)], they don't do it at Stanford, they don't do it at Penn." Johnson Tr. at 80:11–22 (attached as Exhibit 15); *see also id.* at 86:11–13 ("[T]he data provided to me [(the CT Perfusion scan)] should not be used for the assessment of cognitive function

or dysfunction."). Therefore, he concluded the "pretest likelihood that Judge Newman has a cognitive dysfunction should be considered unchanged by this examination." Johnson Rep. at 5.

As Dr. Johnson explained, a CT perfusion scan is actually used for identifying acute ischemic stroke. Johnson Tr. at 19:8–10 (explaining CT perfusion scanners get pictures "usually for clinical purposes, and clinical purposes meaning for stroke"); *see also* Noble Rep. at 13 ("The only clinically indicated use of CT Perfusion is for people presenting with ischemic stroke.").

Even Dr. Rothstein, Judge Newman's own neurologist expert, undermined Dr. Filler's claims. He acknowledged that an imaging study cannot determine whether a person has a cognitive impairment. Rothstein Tr. at 110:19–111:11 (explaining that brain MRI with NeuroQuant is "not used to assess cognitive impairment. It is used to determine is there an anatomic explanation for a patient who is showing signs of cognitive impairment").

Dr. Filler had an opportunity to respond to the opinions provided by Dr. Noble, Dr. DeRight, and Dr. Johnson in a supplemental report, but he provided no additional sources of authority to support his claims about the use of CT perfusion. He did not identify a single authoritative source that corroborated his claims about the capacity for CT perfusion to rule out (or rule in) cognitive impairment.

Second, our decision to credit the opinions of Dr. Noble, Dr. DeRight, and Dr. Johnson is further supported by Dr. Filler's failure to substantiate his assertion that substantial literature supported his claims about CT perfusion. In fact, the articles he cited in his Report did not support his broad assertions and he misstated important aspects of those studies.

For example, Dr. Filler cited three academic papers to support the proposition that CT perfusion (and similar

neuroimaging tests) is "replacing neuropsychology evaluations as a result of the perfusion studies' much higher relevance and accuracy." Filler Rep. at 26–27. But, as Dr. Filler acknowledged, Filler Tr. at 219:16–220:3, the first study involved just twenty-five people and focused solely on two types of dementia: Alzheimer's disease (ten subjects) and vascular dementia (fifteen subjects). *See* Sanket Dash et al., *Perfusion CT Imaging as a Diagnostic and Prognostic Tool for Dementia: Prospective Case–Control Study*, 99 POSTGRAD. MED. J. 318 (2022). This paper reported no findings whatsoever about whether CT perfusion could be used to diagnose cognitive impairment. As Dr. Noble observed, this paper "did not study persons with MCI" and in any event is "a small pilot study" from which "limited inferences can be drawn." Noble Rep. at 14. In fact, as Dr. Filler acknowledged, even though the paper was submitted in 2021 and published in 2023, it states that the "role of PCT [(*i.e.*, perfusion CT)] in evaluation of dementias is still at a nascent stage" and that the "[f]ew studies in this context have shown conflicting results." Filler Tr. at 222:10–223:7; *see also* Dash et al., *supra*, at 318.

The second source Dr. Filler cited was a scientific statement issued by the American Heart Association. *See* Richard E. Latchaw et al., *Guidelines and Recommendations for Perfusion Imaging in Cerebral Ischemia: A Scientific Statement for Healthcare Professionals by the Writing Group on Perfusion Imaging*, 34 STROKE 1084 (2003). This paper is just a "summary of various imaging modalities for the diagnosis of cerebral ischemia—stroke." Noble Rep. at 14. When asked to point to what part of the paper he thought supported his assertion that imaging can replace neuropsychological testing, Dr. Filler was unable to do so and instead asked for "several hours" to re-analyze the paper. Filler Tr. at 243:8.

The third paper Dr. Filler cited was a study of CT perfusion in detecting mild cognitive impairment and different

degrees of Alzheimer's disease. *See* Bo Zhang et al., *The Value of Whole-Brain CT Perfusion Imaging and CT Angiography Using a 320-Slice CT Scanner in the Diagnosis of MCI and AD Patients*, 27 EUROP. RADIOLOGY 4756 (2017). Dr. Noble cautioned against generalizing the study's findings to Judge Newman because it was "conducted at a single center in China" and the "stated demographics for age and education would be unlikely to include someone similar to Judge Newman." Noble Rep. at 15. Crucially, the authors were unable to make any statistically significant findings that CT perfusion could identify persons with mild cognitive impairment. Zhang et al., *supra*, at 4761. When confronted with that point from the article at his deposition, Dr. Filler agreed, noting that CT perfusion imaging "was not able to distinguish" control subjects from those with mild cognitive impairment. Filler Tr. at 225:10–19.

Dr. Filler also mischaracterized a study (Rep. at 16) that investigated whether abnormalities in brain perfusion observed shortly after mild traumatic brain injury were related to long-term cognitive deficits. *See* Zwany Metting et al., *Cerebral Perfusion and Neuropsychological Follow Up in Mild Traumatic Brain Injury: Acute Versus Chronic Disturbances?*, 86 BRAIN & COGNITION 24 (2014). According to Dr. Filler, this study was based on "191 patients" and "concludes that the focal cerebral perfusion data provides an objective basis for assessing the same functions" as seven different neuropsychological tests, which Dr. Filler listed as "the [i] facial expression of emotional stimuli and tests, the [ii] zoom app test for behavioral assessment of dis-executive syndrome, the [iii] ADS battery, the [iv] trail making test, [v] immediate recall, [vi] Rey auditory verbal learning test, and [vii] a two-hour battery of various neuropsychological tests." Filler Rep. at 16–17.

At deposition, Dr. Filler admitted he misread the Metting paper in multiple ways. He admitted that the study was ultimately based on only 18 people, not 191,

Filler Tr. at 234:10–20; *see also* Noble Rep. at 14 (noting Dr. Filler's error); that there were "only four neuropsychological tests actually administered," not seven, Filler Tr. at 236:2–238:17; and most importantly, that the paper found *no s*tatistically significant relation between the CT perfusion results and two out of the four tests administered. Dr. Filler agreed that the study "doesn't provide any evidence for a conclusion that CT perfusion can provide a substitute for these tests." *Id.* at 240:22–241:3. Dr. Noble concluded that the study, since it was based on just "18 persons with a mean age of 35y who recently experienced traumatic brain injury . . . has no relevance to Judge Newman." Noble Rep. at 14.[8]

Ultimately, none of these papers suggests that CT perfusion "can, and do[es], supplant . . . neuropsychology evaluations." Filler Rep. at 26.[9]

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[8] Judge Newman attempts to shore up support for Dr. Filler's assertions by citing, *see* July 21, 2025 Br. at 19, an additional study for the proposition that brain imaging is useful "to diagnose cognitive problems," *see* Ethan T. Whitman et al., *DunedinPACNI Estimates the Longitudinal Pace of Aging From a Single Brain Image to Track Health and Disease*, Nature Aging (July 1, 2025), and a lay summary from a university that backed the study, *see* Veronique Koch and Robin Smith, *Scientists Can Tell How Fast You're Aging From a Single Brain Scan*, Duke Today (July 1, 2025). But that study also does not support Dr. Filler's claims. The Whitman study used brain MRI data from a previous study to estimate how fast a person's brain is aging and to predict future overall "risk for a broad array of diseases." Whitman et al., *supra*, at 9. The particular tool that was studied, DunedinPACNI, was trained on data from people around 45 years old and thus is not even validated for very old individuals like Judge Newman. *Id.* at 2. And the study expressly stated that "diagnosing a specific disease requires a proximal, specific biomarker of that disease." *Id.* at 9.

[9] Indeed, the Dash, Latchaw, Zhang, and Metting papers *presume* the reliability of neuropsychological tests to differentiate between cognitively impaired and nonimpaired subjects. *See* Dash et al., *supra*, at 319 ("Detailed neuropsychiatric evaluation including Montreal Cognitive Assessment (MOCA) was undertaken in each patient"); Latchaw

c. Dr. Filler Made Errors, Including Mislabeling the Hippocampus, in His Annotation of Judge Newman's CT Perfusion Scan.

Finally, Dr. Filler's interpretation of Judge Newman's perfusion CT scan rests on questionable assertions that further undermine the reliability of his opinions. To start, Dr. Filler said Judge Newman's CT perfusion results showed an "exceptionally high flow bilaterally in the hippocampus." *Id.* at 40. On the first page of his report, Dr. Filler showed an image created from Judge Newman's perfusion CT scan annotated with arrows labelling "High Focal Blood Flow in Right Hippocampal Region" and "High Focal Blood Flow in Left Hippocampal Region." *Id.* at 1. Both Dr. Noble and Dr. Johnson concluded that Dr. Filler misread that image and the areas he designated with arrows were *not* the hippocampus. Dr. Noble stated that the "hippocampal regions are several centimeters away from the area highlighted by Dr. Filler" and "[i]t is anatomically not possible for the hippocampus to be where he says it is." Noble Rep. at 17. Dr. Johnson concurred. He explained that the annotated image shows "a slice of the brain at a position higher (closer to the top of the head) than the level of the hippocampi." Johnson Rep. at 2. Indeed, "elevated relative cerebral blood flow to this degree would be pathologic if observed in the hippocampus." *Id.*; *see also* Johnson Tr. at 43:21–44:1 ("[I]t's not a marker of health to have hyperperfusion of a gray matter structure.").

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et al., *supra*, at 1092 (noting "hypoperfusion may be seen in patients who have abnormal neuropsychological tests"); Zhang et al., *supra*, at 4757 ("The diagnosis of AD [test subjects] was based on" among other things, a "neuropsychological examination"); Metting et al., *supra*, at 26–27 (comparing CT perfusion to four neuropsychological tests). Given that, it is not possible to read these studies as calling into question the adequacy of neuropsychological testing.

Dr. Filler then explained in his reply report that his annotated image was not intended to identify the "hippocampal region" (as it was labeled) but rather to identify an area showing venous blood flow coming *from* the hippocampal region. Filler Reply Rep. ¶ 13. But as Dr. Filler acknowledged, the area he identified shows venous drainage from several areas of the brain and is not isolated to venous flow from the hippocampus. *Id.* ("There is no means to separate . . . choroidal flow from hippocampal flow in a CT scan obtained[.]"). Commenting on this statement at his deposition, Dr. Johnson explained there is "no way" to use "this methodology to understand what percent" of blood is perfusing the hippocampus because blood draining from the hippocampus is just "a couple of milliliters" out of the "120 to 160 milliliters of volume" from the "middle cerebral artery territory." Johnson Tr. at 61:10–62:8.

In addition, Dr. Filler's assertion that Judge Newman's CT perfusion data revealed "exceptionally high flow," Filler Rep. at 40, appears to rest on a misinterpretation of the available data. As Dr. Johnson explained, the images provided here were generated by i-RAPID AI CTP iSchemaView software, which interprets the raw data from the CT perfusion scan. Johnson Rep. at 1. Areas of red on the image show higher blood flow and blue areas show lesser flow. But the software does not assign a red color according to an absolute scale, such as a certain number of milliliters of flow per second. Johnson Tr. at 115:6–20. Instead, it assigns a red color to areas of highest flow *for that individual* and then distributes colors along a gradation down to blue to areas of lesser flow. *Id.* at 115:11–20; *see also id.* at 116:14–19 (explaining "the highest blood flow is assigned the red color, and the lower blood flows are . . . assigned that darker blue color . . . and then everything in between is scaled proportionally"); *accord id.* at 57:5–18. As Dr. Johnson put it, "[i]t's normalized to the individual." *Id.* at 116:13. As a result, he explained, it is "not accurate" to use

the images to attempt to compare blood flow from one individual to another. *Id.* at 115:21–116:5. As he explained: "So all C.T. perfusion maps without significant vascular inflow abnormality will qualitatively look like this." *Id.* at 116:19–21.

Dr. Filler, however, asserted that the images showed an "exceptionally high" rate of blood flow and that he could use the data to compare Judge Newman to other individuals. *See* Filler Rep. at 40; Filler Tr. at 94:6–15, 99:16–101:2. Although it is not necessary for our conclusion to resolve this dispute, the evidence available to the Committee suggests that Dr. Johnson is correct and that the software utilized for creating the images does not permit accurate comparisons across individuals.[10]

At bottom, Dr. Filler has not presented any persuasive basis for the Committee to accept his assertion that a perfusion CT scan can definitively rule out cognitive impairment and that neuroimaging can eliminate the need for neuropsychological testing. Judge Newman's brief tacitly acknowledges the degree to which Dr. Filler's broad claims about CT perfusion have been undermined through expert discovery. Judge Newman now asserts that "the point of the PCT scan performed on Judge Newman was to show whether or not her brain has any abnormalities that could account for any cognitive deficits." July 21, 2025 Br. at 20.

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[10] Dr. Filler also asserted that the radiologist at George Washington Hospital, Dr. Taheri, who read the perfusion CT scan reported that it was "completely normal." Filler Rep. at 32. But the radiologist's report does not say that. *See* Ex. 12 at 1–2; *see also* Filler Rep. at 12 (same). Dr. Filler lacked a consistent explanation for how he arrived at that characterization of the report. *See* Filler Tr. at 91:14–96:2 (attempting to show that Dr. Taheri's report claimed on its face that Judge Newman's result was "normal," then saying Dr. Taheri told him on the phone that it was normal). The report notes only that there was no significant disparity in blood flow *relative to the other side of the brain*. *See* Ex. 12 at 1 (expressing blood flow values "relative to contralateral side").

That is clearly *not* how Dr. Filler described the purpose of the CT perfusion scan. He asserted that CT perfusion "can be used to identify or rule out the presence of dementia or cognitive impairment," and that CT perfusion "*supplants* the inevitably subjective practice of neuropsychology in the fundamentals of cognitive assessment." Filler Rep. at 3, 16 (emphasis added). It was Dr. Noble who explained that a CT perfusion scan (or any brain imaging) can be used only to identify an anatomical explanation for a cognitive impairment determined by other means. Noble Rep. at 12.

The Committee therefore credits the testimony of Dr. Noble, Dr. DeRight, and Dr. Rothstein that neuropsychological testing should be conducted.

d. Dr. Filler's interview of Judge Newman relied on a nonstandard approach that is not accepted in the field.

In addition to what he described as a standard neurological exam, Dr. Filler's interview of Judge Newman consisted of (i) asking her a series of questions of his own design that elicited her self-report as to any cognitive symptoms she was experiencing; and (ii) giving her three hypotheticals that he personally devised specifically for her interview and then assessing her ability to respond to the patent law issues raised by the hypotheticals. As Dr. Noble and Dr. DeRight explained, this idiosyncratic approach was not standard in the field and was entirely subjective.

There were at least three flaws in this approach.

First, it appears that the questions Dr. Filler asked relied entirely on Judge Newman's self-report of symptoms. Rather than using any standardized cognitive screening evaluation, Dr. Filler conducts an "initial evaluation" using a questionnaire of his "own design." Filler Tr. at 39:19, 42:12–13. As Dr. Filler explained, he is "an inventor and developer" and thus prefers to develop new methods, including what he described as an "image-based set of

questions" which focuses on particular problems, such as difficulty finding words or remembering faces or song lyrics, so that he can ask the subject "Do you have this memory problem?" *Id.* at 39:19–20, 41:7, 41:10–11. For example, using his questionnaire, Dr. Filler asked Judge Newman whether she was having trouble remembering words, and she replied that her word finding was "normal." *Id.* at 112:9–11; *see also* Newman_Pauline Evaluation 2, OneNote (Aug. 24, 2024) (recording "word finding stated normal") (attached as Exhibit 11). In multiple answers at deposition, Dr. Filler invoked Judge Newman's denial of a memory problem as evidence that she did not have one. *See, e.g.*, Filler Tr. at 133:3–10 ("[B]y my exam she denies memory impairment."), 197:6–7 ("She denies" "an impairment of new memory formation, which I asked her about."). Dr. Filler agreed that "no article in a peer-reviewed journal" substantiates that his form is a valid means of determining whether someone has cognitive impairment. *Id.* at 45:1–4. He also agreed his questionnaire relies on the patient "self-report[ing] what issues they're having." *Id.* at 44:10–12.

It is, of course, common for people with cognitive impairment not to recognize that they have an impairment. "It is recognized," Dr. Noble explained, "that poor self-awareness of cognitive performance is a common problem in aging populations." Noble Rep. at 5. According to Dr. DeRight, Dr. Filler's reliance on Judge Newman's "self-report only" was one reason why this "series of questioning was not an effective way to explore possible cognitive deficits." DeRight Tr. at 39:3–40:16. Judge Newman's own expert, Dr. Carney, agreed that persons "suffering from cognitive decline oftentimes" do not realize it and that this is "a common pattern among people who are experiencing cognitive decline." Carney Tr. at 80:9–21.

Second, Dr. Filler did not use any standard cognitive testing instrument. As a result, he did not obtain any

objective results that could be used to compare Judge Newman's performance to the performance of others on the same standard instrument. As Dr. Noble explained, a "standardized mental status assessment . . . developed in the context of hundreds, if not thousands, of applications and multiple social economic and cultural contexts" is critical to reaching conclusions that are "generalizable." Noble Rep. at 11. Dr. DeRight also found that Dr. Filler's approach "is not a tested technique, has not been subject to peer review, has no known potential error rate, has no standards to control its operation, and does not have widespread acceptance within the relevant scientific community." DeRight Rep. at 17. Omitting standardized tests and instead running through an idiosyncratic set of questions devised especially for the individual being evaluated is not a "reasonable substitute for standard neuropsychological testing, and is not part of a standard or recommended diagnostic approach for persons with cognitive aging problems." Noble Rep. at 11.

Third, Dr. DeRight found Dr. Filler's comparison of Judge Newman's performance during his past oral arguments to his interview "is highly subjective, unscientific, and unreliable." DeRight Rep. at 3. And Dr. Noble concluded that Dr. Filler's approach was "not generally established or accepted in the field as a reasonable substitute for standard neuropsychological testing." Noble Rep. at 11. At deposition, Dr. Noble elaborated that Dr. Filler's approach did not align with the "principle in medicine" of trying "to keep an objective distance" and posed "a risk of having subjectivity or a bias" in the "diagnosis or the recommended workup." Noble Tr. at 296:19–297:4.

e. Dr. Filler provided no analysis to address the concerning behavior described in affidavits by court employees, nor did

he seek other collateral source information.

The Committee also finds it significant that Dr. Filler offered no analysis of the affidavits from court employees and Judge Newman's own emails showing concerning behavior by Judge Newman. He did not provide any explanation why the information in those affidavits and emails did not raise a concern about Judge Newman's cognitive state. Instead, he merely stated, unhelpfully, that Judge Newman had different recollections of the incidents, that he would "not endeavor to resolve which recollection is more accurate," and that he would "take [the] affiants' statements at face value." Filler Rep. at 27.

The Committee believes that Dr. Filler's failure to address the information in the affidavits and emails leaves a significant gap in his analysis and undermines the reliability of his conclusions. As Dr. Noble and Dr. DeRight found, the affidavits describe significant changes in Judge Newman's cognition and behavior Both experts found concerning that court staff saw a "significant increase in Judge Newman forgetting how to perform basic tasks that used to be routine for her." DeRight Rep. at 22. In one significant incident, Judge Newman forgot approving reassignment of one of her staffers to another chambers. Noble Rep. at 9. And the fact that an IT officer had to "feed her answers" so she could complete a security training "alone should have been considered as a dramatic change from her prior abilities." *Id.* Dr. DeRight also found Judge Newman's claims that her phone was bugged and her computer hacked all indicative that she could be suffering from delusions or paranoia, frequent signs of "an underlying neurocognitive disorder." DeRight Rep. at 22.

Dr. Filler's report failed to address any of those concerns. He suggested that the concerning incidents in the affidavits could be "explained by the stress occasioned by" this investigation. Filler Rep. at 27. But that explanation

does not make sense. As noted above in connection with a similar statement from Dr. Carney, *see supra* Part II.A.2.c, although these affidavits were written after the investigation started, the behavior described in the affidavits stretches back long before this proceeding began.

Dr. Filler also failed to seek other collateral source information. He admitted during his deposition that he was "not familiar with the term" "collateral source information" in the context of trying to determine if someone has a cognitive disorder. Filler Tr. at 147:19–148:13. He recognized while "talking to neighbors and family members" could be "helpful," seeking out such sources is "not something that I would do in my practice." *Id.* at 151:22–152:14. He also acknowledged that [redacted] accompanied Judge Newman to her evaluation, but that he did not "question her at all." *Id.* at 152:18. Dr. Filler agreed that on many medical records [redacted] is listed as Judge Newman's emergency contact or legal guardian. *Id.* at 154:15–156:18. And he agreed it would have been "useful" to have information from her. *Id.* at 153:10–12. Yet Dr. Filler never sought information from her.

The failure to obtain collateral source information "is a major flaw." Noble Rep. at 5. Collateral source information, Dr. Noble explained, "substantively and often critically" contributes to piecing together a patient's history. *Id.* He warned that "[i]mportant cognitive changes can be missed without . . . gathering of information through collateral sources." *Id.* "Considering such collateral source information," Dr. DeRight concurred, "is standard procedure in an evaluation for cognitive impairment." DeRight Rep. at 22. While Dr. Filler claimed he would take the affiants' statements at face value, the Committee finds troubling his failure to explain how such a large number of concerns expressed by so many employees, many of whom had worked with Judge Newman closely and over a long period of time, did not justify further testing or at least an

explanation from Dr. Filler reconciling the accounts of these employees with his conclusions about Judge Newman.

f. Additional errors and omissions in Dr. Filler's report undermine the reliability of his conclusions.

Several additional errors or omissions in Dr. Filler's report fortify the Committee's assessment that his conclusions are not reliable.

i. Dr. Filler made incorrect assertions about information in Judge Newman's medical records.

Dr. Filler stated in his report that he had conducted a "Detailed Review" of Judge Newman's medical records, and that they did not shed any light on her current condition. Filler Rep. at 4, 18. That assertion is not correct, and Dr. Filler made at least two significant errors concerning Judge Newman's medical records.

A. Dr. Filler overlooked 68 mentions of Judge Newman fainting in her medical records.

In his report, Dr. Filler twice endorsed Judge Newman's claim that she had never had a fainting episode and asserted that her medical records showed no such episode. *See* Filler Rep. at 4 ("[N]othing in the records shows that Judge Newman has ever suffered a 'heart attack' . . . or had a fainting episode."); *id.* at 18 ("Judge Newman denied having had a heart attack at any point in her life or any fainting episodes, and records do not reveal any such episodes."). But multiple records reviewed by Dr. Filler show that Judge Newman had more than one fainting episode that led to hospitalization. Indeed, the words "syncope" and "syncopal" appear in the medical records

reviewed by Dr. Filler a total of sixty-eight times referring to these episodes.[11]

The records include 118 pages related to an April 19, 2023 fainting episode, that led to Judge Newman being admitted to [redacted] Hospital. And other records point to an earlier syncopal event that also led to hospitalization. A write-up following an office visit dated March 2023—the month *before* the April hospitalization for syncope—made a note about another condition found "when she was in the hospital for syncope." PN_001441; *see also* Filler Tr. at 128:4–129:1.

If Dr. Filler had conducted a careful review of the records, he could not have missed the multiple records referring to the April 19, 2023 hospitalization for fainting and the previous hospitalization for fainting discussed in March 2023.

The Committee finds Dr. Filler's failure to recognize incidents of syncope particularly concerning given that there was no need to scour the medical records to find confirmation of such an incident. On its face, Dr. Carney's report relates that Judge Newman *admitted* to having an episode of syncope (although she denied being admitted to the hospital). Carney Rep. at 4. Dr. Filler's failure to note that episode recounted in Dr. Carney's report suggests a significant deficiency in his review and consideration of the materials before him.

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[11] *See* PN_001436; PN_001437; PN_001441; PN_001547; PN_001591; PN_001609; PN_001612; PN_001632; PN_001638; PN_001658; PN_001660; PN_001661; PN_001670; PN_001671; PN_001672; PN_001676; PN_001678; PN_001683; PN_001684; PN_001688; PN_001689; PN_001690; PN_001694; PN_001696; PN_001700; PN_001701; PN_001708; PN_001712; PN_001729; PN_001731; PN_001732; PN_001739; PN_001740; PN_001741; PN_001742; PN_001749.

At his deposition, Dr. Filler attempted to dismiss the records relating to the April 19, 2023 fainting by asserting that it was not clear that Judge Newman had actually fainted and that the records suggested a "split second" event that might have involved Judge Newman merely feeling light-headed. Filler Tr. at 119:21–120:21; *see also id.* at 124:21–125:5 ("[A] faint would be something like someone being witnessed to have been blacked out and fallen, for instance. The description of a 'split second' indicates maybe a brief moment of feeling a decrease in sensorium."). But that is also inaccurate. On further questioning, Dr. Filler acknowledged that the medical records explained that, in the April 2023 event, Judge Newman "passed out and fell to the floor." *Id.* at 126:21–22 (quoting PN_001436). Then Dr. Filler conceded "I might have missed that line. . . . I don't think I saw that." *Id.* at 127:14–16.

But it was not just one line in the records that described the fainting episode. Another record described Judge Newman as arriving at the emergency room "1 hour[] post witnessed syncopal episode after standing up out of a chair," and went on to say that "she was told that she had her eyes open prior to falling to the floor without hitting her head." PN_001670; PN_001672; *see also* Filler Tr. at 145:11–146:8. Dr. Filler had to admit "I obviously missed the – detail – some of the details of that." Filler Tr. at 146:22–147:2.

The Committee finds it damaging to the argument for crediting Dr. Filler's opinion that so many records exist extensively discussing Judge Newman's fainting after Dr. Filler assured the Committee, based on a "detailed review," that no such records existed.[12]

[12] Judge Newman now asserts that, when she denied fainting to Dr. Filler, she was actually denying only that she had fainted in the

B. Dr. Filler overlooked medical records reporting problems with memory impairment.

Dr. Filler also missed multiple records showing that "memory impairment" was noted as a problem on a "problem list" for Judge Newman. *See, e.g.*, PN_000003; PN_000130; PN_000256; PN_000265; PN_000275; PN_000707; PN_001133; PN_001359. One of these is dated as late as April 2024. *See* PN_001133. During his deposition, Dr. Filler conceded that these notations were relevant to the question whether Judge Newman has a cognitive disorder, Filler Tr. at 129:13, 134:11–12, and that it would have been "helpful" to know why this notation was made, *id.* at 133:3. He admitted he "may have missed" some of these records during his review.[13] *Id.* at 141:15. If Dr. Filler had conducted a careful review of the medical records, he would have seen "memory impairment" noted on Judge Newman's problem list. And, importantly, he would have followed up to find out why someone had noted "memory impairment" as a problem for Judge Newman.

The Committee believes that Dr. Filler's error on this point bears on whether his opinion can soundly be credited.

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courthouse on May 3, 2022. July 21, 2025 Br. at 25–26. Even if that is what Judge Newman meant, that explanation does nothing to rehabilitate Dr. Filler's opinion, because there is no indication that Dr. Filler understood her to be making such a limited assertion or that he was making a limited assertion about the absence of medical records. Dr. Filler's report states without limitation that "Judge Newman denied . . . any fainting episodes, and records do not reveal any such episodes." Filler Rep. at 18. And even when asked at deposition about the records he overlooked, Dr. Filler did not explain his omission by saying that he was actually reporting only that there were no medical records about an incident in the courthouse in May 2022.

[13] He also missed records documenting forgetfulness. *See, e.g.,* PN_001305 (documenting mental status as "forgetful"); PN_001690 (noting that Judge Newman reported that she "has often times forgotten to eat and drink").

Judge Newman was presenting Dr. Filler's review of her medical records as a substitute for providing the records to the Committee for review. Her argument on her Motion for Reconsideration was that, because Dr. Filler was a neutral expert who had thoroughly reviewed the records, the Committee did not need to see them. Sept. 25, 2024 Motion at 10–11; *see also* Dec. 2, 2024 Br. at 6 ("Dr. Filler reviewed these records not with a view of 'considering' them, but to provide an independent verification that ~~some of~~ [*sic*[14]] the records previously demanded by the Committee simply do not exist."); *id.* at 7–8 (arguing that Dr. Filler's "conscientious[] review[]" "allow[s] the Committee to also assure itself that the previously requested records do not exist"). Accordingly, it was especially important for Dr. Filler to exercise particular care before providing an assurance that nothing in the medical records "suggest[s] a cognitive decline or neurological deficits." Filler Rep. at 18. It appears, however, that his review was not sufficiently careful. Indeed, he seemed to acknowledge at his deposition that he was not conducting an especially thorough review as he explained his failure to see some records by saying, "I'm being her neurosurgeon, not her internist." Filler Tr. at 134:8.

The Committee finds it damaging to the argument for crediting Dr. Filler's opinion that, after a supposedly "detailed review" of the medical records, he assured the Committee that no records reflected on Judge Newman's cognitive state when in fact there were multiple notations of "memory impairment" in those records.

ii. Dr. Filler's reliance on Judge Newman's Karnofsky Performance Scale Rating was misleading.

[14] The document filed by Judge Newman shows the words "some of" being struck out in the sentence quoted in text. To the extent that deletion shows evidence of a drafting decision that made the sentence less accurate, it raises a side issue that the Committee will not pursue.

Dr. Filler's report to the Committee is further undermined by his summary of Judge Newman's health. The only time Dr. Filler quotes from the medical records is to proclaim that Judge Newman's "overall current assessment" is: "***Able to carry on normal activity; minor signs or symptoms of disease***." Filler Rep. at 24 (emphasis in original). His presentation of this quotation—combining bold, italics, and underlined text offset as its own paragraph—suggests to the reader of his report that it was one of the most important parts of Judge Newman's medical records.

That quotation, however, is simply stock language from Judge Newman's rating under the Karnofsky Performance Status (KPS), a scale consisting of 11 categorical ratings in increments of 10 ranging from zero (dead) to 100 (completely healthy). Dr. Filler omitted "Karnofsky: 90 percent" from the beginning of that quotation. *See* Filler Tr. at 160:13–14. The KPS rating does not serve as a relevant measure of a patient's decisionmaking capacity.[15] During his deposition, Dr. Filler agreed that the KPS rating measures only a patient's ability to complete "normal life activities" such as "whether they're not able to feed themselves" or "take themselves to the bathroom." *Id.* at 161:1–7. When asked whether a KPS rating had any bearing on Judge Newman's decisionmaking capacity, Dr. Filler repeatedly disclaimed placing any reliance on this quotation. *Id.* at 161:14 ("I didn't rely on this"), 162:6 ("I did not rely on this"). Dr. Filler was unable to provide a credible explanation for why he isolated and emphasized a partial quotation that he did not rely upon.

[15] *See, e.g.*, Roy C. Martin et al., *Impairment of Medical Decisional Capacity in Relation to Karnofsky Performance Status in Adults with Malignant Brain Tumor*, 2 Neuro-Oncology Prac. 13, 17 (2014) (finding even patients with a 90 percent KPS may have "impaired decisionmaking capacity performance" and "KPS should not be used as a proxy for consent capacity").

Dr. Filler was also incorrect in referring to Judge Newman's 90 percent KPS rating in July 2023 as her "current" assessment. As he acknowledged, he missed that there was a subsequent KPS assessment of Judge Newman in August 2023 in which her categorical KPS rating "went down from 90 percent to 80 percent." *Id.* at 164:4–7. So Dr. Filler's selective quotation of this assessment was not "current," and even if it had been, it had no bearing on Judge Newman's cognitive health or her ability to carry out her duties as a federal judge.

The Committee finds that Dr. Filler's truncated KPS rating quotation was erroneous and attributed greater significance to the rating than was justified. It further undermines the Committee's ability to credit his opinion.

iii. Dr. Filler erroneously claimed that his submissions as an expert have never been excluded.

Dr. Filler asserted in his report that he testified as an expert witness "more than a hundred" times and that his testimony "has never been excluded." Filler Rep. at 4. He repeated that claim in his deposition. Filler Tr. at 58:2–8.

The assertion that his opinions have never been excluded, however, is inaccurate. His expert testimony or reports have been excluded several times.

In *Klein v. Norwalk Hospital*, the court granted a motion to preclude Dr. Filler's report, finding that "the peer review articles do not sufficiently demonstrate that the testing procedure is reliable and valid and that the testing procedure of Dr. Filler is not generally accepted in the community." No. FSTCV030197784S, 2012 WL 4040689, at *11 (Conn. Super. Ct. Aug. 27, 2012). At his deposition, Dr. Filler explained that he merely submitted an imaging study report in that case and was unaware how the court had ultimately treated it. Filler Tr. at 59:14–15, 62:3–4. Even accepting that explanation, he made an unqualified

assertion without checking the facts. *Klein* shows it was not true, and *Klein* is not the only matter in which Dr. Filler's submissions as an expert have been excluded.

In *Orlando v. Nelson*, No. B294663, 2020 WL 1969361 (Cal. Ct. App. Apr. 24, 2020), the California Court of Appeal affirmed a lower court order excluding portions of Dr. Filler's opinions. *Id.* at *3. That decision explained that the lower court "identified what it considered to be major substantive flaws in Dr. Filler's declaration" and "found his opinions too conclusory." *Id.* at *1. Dr. Filler then submitted a second declaration. The trial judge found that it "did not address many of the problems the court had identified, and in some respects, it was 'almost like he ignored me.'" *Id.* at *2. The Court of Appeal upheld the decision excluding Dr. Filler's opinions as "conclusory and not properly supported." *Id.* at *3. After being shown this decision, Dr. Filler's answer was "I don't really recall this one." Filler Tr. at 64:16–17.

A ruling excluding portions of Dr. Filler's testimony was also affirmed in *Belfiore-Braman v. Rotenberg*, where the trial court found Dr. Filler's views "too speculative to present to the jury." 235 Cal. Rptr. 3d 629, 640 (Cal. Ct. App. June 26, 2018). Dr. Filler attempted to explain *Belfiore-Braman* by insisting he was not completely excluded from the case. *See* Filler Tr. at 66:14–22. When asked if he understood that portions of his testimony were excluded, he answered: "Well, apparently, yeah." *Id.* at 67:1–3.

The Committee finds that Dr. Filler's statement that his expert testimony has never before been excluded failed to display the care about facts we would expect of an expert physician and a member of the bar of this Court. This further undermines our ability to credit his report.

B. Dr. Noble and Dr. DeRight Confirm that the Committee Was Correct To Order

Neuropsychological Testing, Which Is Essential for the Committee to Fulfill Its Task.

The reports of both Dr. Noble and Dr. DeRight confirm that the Committee was correct to order Judge Newman to undergo neuropsychological testing.

Dr. Noble explained that the information he reviewed provided significant evidence suggesting that Judge Newman may suffer from cognitive impairment and that, given such evidence, the proper next step—and the step warranted in this case—is neuropsychological testing.

Dr. Noble pointed, in particular, to two portions of the evidence. First, the MoCA administered by Dr. Rothstein showed "meaningful memory changes which should have prompted at least a consideration of MCI [mild cognitive impairment] and warranted further workup including neuropsychological testing." Noble Rep. at 9. As explained above, the MoCA test showed that Judge Newman was unable to recall four of the five words she was asked to remember. As Dr. Noble explained, "[t]he most common finding in MCI and early Alzheimer's disease is exactly this pattern—forgetting what was just learned." *Id.* Dr. Noble rejected Dr. Rothstein's characterization of the MoCA result as showing merely a "slight limitation in immediate memory," which Dr. Noble concluded "understates or ignores what the MoCA demonstrated." *Id.* In addition, Judge Newman's score translated to 25/30 on a 30-point scale, *see supra* p. 15, meaning that 84–94% of "age-education-sex matched peers would be expected to perform better on the MoCA than Judge Newman," and providing "further evidence to potentially diagnose MCI." Noble Rep. at 6. He continued: "Whether considering adjusted or unadjusted MoCA scores, either way her difficulties should have prompted further evaluation such as with formal neuropsychological testing." *Id.*

Second, Dr. Noble pointed to the affidavits from court personnel gathered by the Committee and Judge Newman's own emails. As Dr. Noble explained, the "affidavits clearly demonstrate that multiple persons observed meaningful longitudinal changes in cognition and behavior in Judge Newman." *Id.* at 9. The Committee will not repeat at length the information in the affidavits. That has been covered sufficiently in prior orders. *See, e.g.*, 2023 Judicial Council Order at 19–33. Instead, we highlight some information that Dr. Noble found especially probative. As Dr. Noble recounted in his report and at his deposition, he found particularly significant the affidavits from employees who had worked with Judge Newman for several years and who reported significant changes in her behavior over time, particularly her ability to remember how to perform relatively easy tasks that she previously knew how to perform. Dr. Noble explained: "if somebody had skill with doing something on a computer and then lost that skill and then had to be retrained over and over again, that to me was important." Noble Tr. at 137:16–19; *see also id.* at 140:14–142:5. The affidavits from IT personnel describe precisely such a loss of skills. One IT employee recounted: "Judge Newman was simply not comprehending the simple process for using the application that she used to have no problem handling on her own." Apr. 24, 2023 [redacted] Aff. ¶¶ 7–9, 10. Another IT employee recounted that Judge Newman was unable to pass computer security training and that he had to "feed her answers." [redacted] Aff. ¶ 5. As Dr. Noble explained, the attested-to inabilities "should have been considered as a dramatic change from her prior abilities and a meaningful drop from her expected performance." Noble Rep. at 9.

Dr. Noble found these affidavits particularly persuasive because the affiants had worked closely with Judge Newman over a long period of time and expressed obvious admiration for her. Noble Tr. at 140:11–141:10 (explaining

he focused on specific affidavits that "had the longitudinal experience with Judge Newman to see, you know, things that were evolving over time"); 145:4–19 (explaining the [redacted] affidavit "even mentioned . . . 'I'd like to say I love, revere and admire Judge Newman,' so to me, it didn't come through that he was a disgruntled employee" and "he seemed upset to see [Judge Newman] change"); 151:4–9 (explaining he focused on specific affidavits "as being important for demonstrating some sort of change over time when it came to – cognition."); 151:21–152:1 ("[redacted] said he loves, reveres and admires Judge Newman. That's pretty positive."); 190:21–191:2 (explaining "the affidavits are the best surrogate for somebody's observed day-to-day activities" and "the best evidence I have of a collateral source"); 197:4–8 (confirming he "had no doubts about the validity of the affidavits"); *see also* [redacted] Aff. ¶ 2 ("When I first started, I was amazed that someone in her 80s, like Judge Newman was at the time, could pick things up so quickly and easily. However, particularly over the last few years, I've noticed a significant increase in Judge Newman forgetting how to perform basic tasks that used to be routine for her.").

Dr. Noble also noted that Judge Newman's own email exchanges showed memory loss and impaired comprehension. As Dr. Noble summarized one exchange, "[t]wo emails about the same topic 4/19/23 and 4/27/23 suggest that Judge Newman had forgotten that one of her staffers [redacted] had been reassigned, even though Judge Newman herself approved it." Noble Rep. at 9.[16] Similarly, a "lengthy email exchange July 6-7, 2023 about access to her files highlights that Judge Newman was unable to understand multiple clear explanations given by others." *Id.* at 10; *see also id.* at 22 (noting that there "is clear evidence

[16] Judge Newman's April 19 email "agreed" her law clerk [redacted] should be reassigned and her April 27 email denied awareness of this reassignment. *See* 2023 R&R at 44–45 (citing Exs. 2 & 3).

that Judge Newman forgot major events at work [and] had clear difficulty understanding complex situations at her job").

Dr. Noble's detailed assessment confirms the Committee's prior conclusion that the affidavits provided evidence of changes in Judge Newman's behavior and cognitive state that supported requiring Judge Newman to undergo neuropsychological testing. Indeed, Dr. Noble concluded that "based on the information that is available, in the standard of practice it cannot be said that her cognition is normal." *Id.* at 22.

Dr. Noble confirmed that the appropriate step for further assessment of Judge Newman would be neuropsychological testing as he explained, "[n]europsychological testing remains standard practice in clinical and research settings to determine the nature and extent of cognitive problems." *Id.* at 18. Indeed, Dr. Noble specifically concluded: "Based on the information I have reviewed, particularly because of the observed decline included in the affidavits, combined with the low MoCA performance, it is my professional opinion that neuropsychological testing for Judge Newman is warranted." *Id.* at 19; *see also id.* at 22 ("A diagnostic workup including neuropsychological testing should have been recommended.").

Dr. DeRight reached a similar conclusion. He noted that the affidavits from [redacted] and [redacted] noted "a significant increase in Judge Newman forgetting how to perform basic tasks that used to be routine for her." DeRight Rep. at 22.[17] And multiple affidavits described Judge Newman making frequent assertions that "someone

[17] *See, e.g.*, Apr. 24, 2023 [redacted] Aff. ¶¶ 7–11 ("We have to walk her through the same steps over and over and she does not seem to remember them from day to day."); [redacted] Aff. ¶ 2 ("[O]ver the last few years, I've noticed a significant increase in Judge Newman forgetting how to perform basic tasks that used to be routine for her.").

was 'hacking' her computer despite no evidence of this happening." *Id.* Dr. DeRight explained that such "observations are especially important because neuropsychiatric symptoms such as delusions and paranoia are often identified as the first manifestation of an underlying neurocognitive disorder, and they are widely prevalent in individuals with dementia." *Id.* at 22–23. He also noted that Judge Newman's email exchanges showed her forgetting recent events – including the departure of a clerk from her chambers.[18]

He concluded that the "affidavits and declarations highlight concerning signs of possible cognitive decline that warrant further comprehensive investigation with validated methodologies"—*i.e.*, neuropsychological testing. *Id.* at 22. As Dr. DeRight explained throughout his report, "[n]europsychological assessment is a cornerstone of measuring cognitive abilities and is the expected avenue for exploring potential cognitive deficits as they relate to a potential workplace problem" and such testing "is the industry standard for the objective assessment of cognitive functioning." *Id.* at 13; *see also id.* ("Standardized neuropsychological assessment is essential to assess the degree and profile of cognitive dysfunctions for clinical diagnosis."). While the many affidavits from court personnel plainly raise sufficient concerns to warrant neuropsychological testing, as Dr. DeRight noted "they are not diagnostic in and of themselves." *Id.* at 24. Neuropsychological testing remains necessary to determine whether an impairment exists and, if it does, the nature and extent of that impairment.

Dr. DeRight also pointed to the partial MoCA administered by Dr. Rothstein and explained that the results on

[18] Dr. DeRight also explained that having affidavits from nine different co-workers provided more information than is usually available in fitness for duty cases in his experience. DeRight Tr. at 162:3–9.

that test showed that "Judge Newman exhibited significant problems with memory recall." *Id.* at 27. He also rejected Dr. Rothstein's characterization of Judge Newman's failure to remember four out of five words as indicating only a "slight limitation in immediate memory." *Id.* He pointed out that "data from the test publisher indicate that this score is commonly associated with cognitive impairment." *Id.* That assessment reinforces the conclusion that neuropsychological testing is warranted.

C. Additional Evidence Confirmed that the Committee's Orders for Neuropsychological Testing and Production of Medical Records Were Reasonable.

In addition to the expert opinions provided by Dr. Noble and Dr. DeRight, additional evidence developed in the course of considering the Motion for Reconsideration further confirms that the Committee's orders requiring neuropsychological testing and the production of medical records were reasonable.

1. Judge Newman's medical records list "memory impairment" as a problem for her.

Judge Newman's medical records show that "memory impairment" was added to Judge Newman's problem list by her physicians in April 2022, a year before this investigation started. PN_000003. Other records show that it was removed from the problem list on November 5, 2023, *id.*, but then it reappeared on the problem list in April 2024. PN_001133. Another record reports that Judge Newman was "forgetful" as part of a mental status exam. *See* PN_001406; PN_001412; PN_001418. After fainting in April 2023, Judge Newman reported that she "has often times forgotten to eat and drink" and "had not eaten in the past 1.5 days." PN_001690; PN_001437.

Dr. Noble and Dr. DeRight both agreed that the notation of "memory impairment" was significant and that it would be important to follow up to understand why that notation was made. *See* Noble Suppl. Rep. at 3; DeRight Suppl. Rep. at 2 (attached as Exhibit 2); DeRight Tr. at 141:11–142:3. Indeed, Judge Newman's own experts agreed that such a notation was significant and that it would be important to understand why memory impairment had been noted on a problem list. *See* Rothstein Tr. at 75:5–7 ("I would want to know on what basis the determination that there was a memory impairment was made."); Carney Tr. at 153:5–8 ("Q: [D]id you think it was important to understand why memory impairment had been noted on a problem list? A: Yes."). The Committee is not here treating the records noting "memory impairment" and "forgetful[ness]" as providing a definitive diagnosis or establishing a cognitive deficit on Judge Newman's part. They do, however, raise significant questions that plainly warrant further investigation.

Judge Newman repeatedly argues that it is significant that, despite all of the medical visits she has had with multiple specialists (including a cardiologist and a pulmonologist), none of her "medical providers" has "expressed any concerns" about "her mental fitness or abilities." July 21, 2025 Br. at 2; *see also id.* at 31. The Committee believes that the recurrence of "memory impairment" on Judge Newman's problem list undermines the claim that no medical provider has ever noted a concern about Judge Newman's cognitive state. More important, the mere absence of additional records addressing any cognitive concerns cannot bear the weight Judge Newman would place on it. As Dr. DeRight has explained: "One thing about the medical records is you can't find what you're not looking for, so if she's not going to a doctor due to concerns about cognition, no one's going to be looking for it or commenting on it." DeRight Tr. at 75:19–76:1. For that reason, as Dr.

DeRight put it succinctly, in this respect the cited "absence of evidence is not evidence of absence." *Id.* at 86:12.

In addition, the medical records noting "memory impairment" as a problem also highlight the fact that, even now, the Committee has not had access to all of Judge Newman's medical records that would be relevant for shedding light on her cognitive state. The first appearance of "memory impairment" on the problem list on April 27, 2022, coincides with the date of a visit that Judge Newman had with her cardiologist, Dr. [redacted] But as Dr. DeRight explained, there has not been produced any medical record of what occurred at that appointment. DeRight Suppl. Rep. at 2. In other words, there is no produced record that shows *who* put "memory impairment" on the problem list or *why*. Similarly, there is no produced record that appears to correspond with the reappearance of "memory impairment" on the problem list in April 2024. Such records would be important for understanding the significance of the "memory impairment" notation.

2. Medical records suggest that Judge Newman's law clerk has taken on an increasing caregiver role.

The produced medical records show Judge Newman's career law clerk, [redacted], taking on an increasing role in assisting Judge Newman to secure medical care. In some more recent medical records, Ms. [redacted] appears to have shifted from merely scheduling Judge Newman's medical visits and accompanying Judge Newman on these visits to providing Judge Newman's medical history for her. *See* PN_001426, PN_001533, PN_001535. As Dr. Noble explained, "[i]n the later years covered by the records in 2023-24, it appears that [redacted] is almost invariably the one who initiated contact or ended up being the first line of contact in outpatient care." Noble Suppl. Rep. at 3. Records indicate that Ms. [redacted] is variously listed on medical records as "POC [Point of Contact]", "assistant",

"friend", "caregiver", "caretaker", "emergency contact", and even as her "legal guardian." *See, e.g.*, PN_000121; PN_000252; PN_000261; PN_000271; PN_000278; PN_000288; PN_000964; PN_000968; PN_000969; PN_001135; PN_001322; PN_001328.

The Committee certainly recognizes that these entries on medical records could reflect misconceptions and cannot be taken at face value as accurately reflecting Ms. [redacted]'s legal status with respect to Judge Newman. *Cf.* July 21, 2025 Br. at 27 n.24. But the very fact that anyone encountering Ms. [redacted] and Judge Newman at a medical visit could have the impression that Ms. [redacted] was a "caregiver" (or "legal guardian") raises significant questions about Judge Newman's current cognitive state. The Committee sought from the outset to obtain information from Ms. [redacted] who refused to cooperate and instead invoked the Fifth Amendment in response to nearly all of the Committee's questions. At a minimum, these records abundantly confirm that it is vitally important for the Committee to have access to more objective information about Judge Newman's cognitive state which further supports the Committee's order for neuropsychological testing.

3. Evidence suggesting that Judge Newman can speak coherently and fluidly does not undermine the need for testing.

Throughout this proceeding, Judge Newman has also pointed the Committee to videos of interviews she has given and her speeches at events as evidence of her cognitive state. The Committee has considered these videos, and we have also considered observations of her demeanor noted by her experts. Dr. Rothstein observed that "[h]er speech is fluid, with normal content and articulation. She describes her medical history and background with great detail and eloquence." Rothstein Rep at 1. Dr. Carney noted that "[s]he spoke fluently and attended well to the interview, handling changes in topics with agility." Carney

Rep at 3. And Dr. Filler reported that Judge Newman was "gracious, informative and communicative," Filler Rep. at 27, and that "[s]he engages normally and fluidly in interaction and conversation without any apparent diminishment," *id.* at 28.

All of this information suggesting that Judge Newman is able to speak eloquently in limited scenarios does not overcome the overwhelming evidence indicating that further neuropsychological testing is warranted. Indeed, such an ability to produce fluid speech and apparently "normal" cognition is to be expected, even if there are relevant cognitive disabilities, in a person, like Judge Newman, who is highly educated and had a particularly high cognitive ability to begin with.

As Dr. Noble explained, that is why people with a high "cognitive reserve" (like Judge Newman) can perform well on a simple screening instrument like the MoCA even when meaningful and concerning changes in cognition are taking place that would be identified by neuropsychological testing. Noble Tr. at 168:17–22; *see also* Noble Rep. at 10 ("Simply put, very smart and accomplished people like Jude Newman can do well on cognitive screening examinations, even when important, meaningful, ongoing cognitive changes are happening, and these are only revealed on more in-depth neuropsychological assessments."); Noble Tr. at 182:8–11 (explaining that people with "high cognitive reserve . . . tend to fare just fine on screening evaluations but perform unpredictably, sometimes poorly on formal neuropsychological testing"). In essence, "people who are highly intelligent with a high degree of cognitive reserve can basically fool us on screening evaluations." *Id.* at 189:1–3.

Dr. DeRight agreed as he explained that "[i]t is well known that individuals with higher levels of education are more likely to be able to mask clinical manifestations of cognitive impairment" and that "Judge Newman is more

likely to be able to 'mask' cognitive symptoms outside of standardized cognitive testing, *especially when engaging in familiar tasks*." DeRight Rep. at 6 (emphasis added). Mere observations of Judge Newman delivering speeches or conversing in interviews covering familiar territory, or the evaluations performed by Drs. Rothstein, Carney, and Filler, are no more rigorous than screening evaluations and thus provide no convincing evidence of her cognitive state.

Our colleague is now 98 years old and her memory may be deteriorating during the course of this proceeding. In August 2023, Judge Newman told Dr. Carney that she had had one fainting episode but was not admitted to the hospital. *See* Carney Rep. at 4. That was incorrect, both because she was admitted to the hospital in April 2023 and because there was more than one fainting episode. At least when she met with Dr. Carney in August 2023, Judge Newman could recall the fainting episode from four months earlier. *See id.* By the time she saw Dr. Filler in August 2024, however, Judge Newman apparently could not remember that episode at all, because she insisted to Dr. Filler that she had never experienced any fainting episodes. *See* Filler Rep. at 4, 18.[19]

[19] As noted, *see supra* n.12, Judge Newman now asserts that she has "consistently denied" *only* the particular fainting episode described in the March 24, 2023 Order initiating this proceeding—an incident in the courthouse. *See* July 21, 2025 Br. at 25–26. But that assertion cannot explain the memory lapses that are apparent from the record. First, Judge Newman squarely described the April 2023 fainting episode to Dr. Carney, and did so incorrectly by insisting she had not been hospitalized. She was obviously not limiting her assertions to fainting in the courthouse at that point. Second, nothing in the contemporaneous record suggests that she addressed only fainting in the courthouse with Dr. Filler. As explained above, *see supra* n.12, Dr. Filler certainly did not understand Judge Newman to be making such a limited assertion. And because she discussed the April 2023 incident with Dr. Carney, there is no reason to think she would not have included it when she was evaluated by Dr. Filler. His handwritten notes record that

4. The absence of evidence of further cognitive decline does not bolster Judge Newman's case.

Judge Newman asserts that the absence of any cognitive disability is confirmed by the fact that there is no evidence showing that she is experiencing any further cognitive decline. July 21, 2025 Br. at 21–22, 30, 34. According to Judge Newman, the CT perfusion scan has ruled out gross abnormalities in her brain (such as trauma or stroke), and that means any cause of cognitive impairment must be a degenerative disorder, and that means that if she is not showing further degeneration, she must not have any disorder. *Id.* at 21. The Committee finds this argument unpersuasive.

First, it is not obvious to the Committee that, if trauma and stroke are ruled out,[20] the only remaining causes of cognitive impairment are degenerative disorders. None of the expert witnesses provided that view. In fact, Dr. DeRight noted one form of nondegenerative, age-related cognitive impairment. DeRight Tr. at 56:21–57:9 (B12 vitamin deficiency). The Committee cannot credit Judge Newman's assumption that the apparent absence of a gross abnormality in her brain necessarily means she either has a neurodegenerative disorder that would manifest noticeable deterioration within the last two years or else is cognitively healthy.

Second, when Judge Newman's counsel asked Dr. DeRight whether one would expect Judge Newman to be

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Judge Newman claimed "no seizure/syncopal events." Newman_Pauline Evaluation 3, *supra*, Ex. 11.

[20] The Committee's experts have not been provided information that would allow them to definitively rule out a gross abnormality in Judge Newman's brain. While Dr. Johnson said he did not see gross abnormalities in the processed images from Judge Newman's CT perfusion scan, he qualified that observation by noting those images "are not intended as diagnostic images." Johnson Tr. at 55:13–16.

worse now from the way she was in August 2024, Dr. DeRight explained that "August 24th 2024 compared to now in neurodegenerative disease process time is a pretty short amount of time" and that some "exceptionally bright people" can mask cognitive decline "for many years, so it's not a hard and fast rule." *Id.* at 42:4–19; *see also id.* at 39:20–40:5 (explaining that the time in which a neurodegenerative disease progresses is not standard and varies from person to person). Thus, even if there were not a notable further decline in Judge Newman's cognitive state over the course of a year or two, the Committee is not persuaded that absence of such decline would disprove that she suffers from a cognitive disorder.

Third, and most important, Judge Newman's assertion that she has suffered no further cognitive decline is not supported by any evidence. The affidavits from court employees noted a decline in Judge Newman's cognition leading up to the summer of 2023. *See, e.g.*, Apr. 24, 2023 [redacted] Aff. ¶ 8 ("Over the last year, I've noticed in my interactions with Judge Newman what seems to be significant mental deterioration."); [redacted] Aff. ¶ 2 ("[O]ver the last few years, I've noticed a significant increase in Judge Newman forgetting how to perform basic tasks that used to be routine for her."). And in the two years since the summer of 2023, there is no evidence at all on which to evaluate Judge Newman's cognitive state—other than the evaluation conducted by Dr. Filler, which has numerous flaws discussed above and which, as noted, may suggest deterioration by Judge Newman's seeming failure to remember the April 2023 fainting episode she had reported to Dr. Carney in August 2023. In the past two years, Judge Newman has been largely absent from the courthouse, she has had very little interaction with employees, and the Committee has no basis on which to evaluate whether she has or has not suffered further cognitive decline.

The employee accounts of confusion, inability to retain simple instructions, memory loss, anger, agitation, and apparent paranoia, her own emails demonstrating the same, in combination with evidence from Judge Newman's own medical records—which indicate that she has suffered from memory impairment and forgetfulness—increase the Committee's concern over her participation in cases absent neuropsychological testing. On this record, we continue to find that there is a reasonable basis for ordering Judge Newman to take the full neuropsychological battery of tests by an independent provider selected by the Committee.

D. Judge Newman's Assertions Have Repeatedly Been Mistaken on the Facts.

The Committee also believes it is relevant to its analysis that many of the factual assertions Judge Newman has made to the Committee have turned out to be incorrect.

Judge Newman's counsel repeatedly told the Committee that every doctor who has examined Judge Newman has concluded that she does not need neuropsychological testing. Indeed, from the outset, Judge Newman relied on Dr. Rothstein's examination to argue that Dr. Rothstein had found that Judge Newman was fully fit for duty and had said that no further testing was needed. Judge Newman's letter brief of July 5, 2023, which first presented the Rothstein report to the Committee, edited the conclusion stated in Dr. Rothstein's report by asserting that Dr. Rothstein's examination led Dr. Rothstein "to conclude that Judge Newman's 'cognitive function *is* sufficient to continue her participation in her court's proceedings.'" July 5, 2023 Ltr. at 2 (emphasis added). The text of Dr. Rothstein's report actually said that his examination "would *support* her having cognitive function sufficient to continue her participation in her court's proceedings." Rothstein Rep. at 2 (emphasis added). As Dr. Rothstein conceded at his deposition, his use of a different construction ("would support")

was deliberate, because he did not want to convey a definitive statement. Rothstein Tr. at 112:16–114:15.

In addition, the July 5 letter asserted that "[t]his examination should obviate the need for any further testing." July 5, 2023 Ltr. at 2. As Dr. Rothstein explained at his deposition, however, further testing is exactly what he recommended. *See* Rothstein Tr. at 94:18–95:6, 112:1–3, 112:13–15.

A year later, on July 10, 2024, counsel for Judge Newman told this Committee at oral argument:

> None of her physicians have suggested any need for any additional—or, any mental exams at all.
>
> ***
>
> Neither Dr. Rothstein nor Dr. Carney nor any of [Judge] Newman's treating physicians have ever suggested that she is in a position where a mental competency exam would be advisable.

July 10, 2024 Oral Arg. Tr. at 34:11–13, 35:19–22. Those assertions were not accurate.

Counsel further represented to the Committee that he would be "happy to submit an affidavit from Judge Newman personally that she was not recommended to undergo any medical exams." *Id.* at 35:8–11; *see also id.* at 40:19–41:3 ("But the point is that no one except members of this Committee . . . thought that Judge Newman is in need of a mental competency exam. It's only this Committee . . . ."). In Judge Newman's brief responding to the Committee's Report & Recommendation of July 31, 2024, Judge Newman again insisted that "*none* of her own doctors . . . have noticed any mental deterioration that would have caused them to recommend further medical and/or psychiatric evaluation." Aug. 14, 2024 Br. at 8. The brief again represented that Judge Newman could "affirmatively stat[e] that neither Dr. Rothstein nor Dr. Carney suggested

further testing upon completion of their evaluation." *Id.* at 10. These assertions were also mistaken.

Judge Newman also presented the report from Dr. Filler to the Committee and argued that the Committee could rely on Dr. Filler's review of Judge Newman's medical records and that the Committee should accept Dr. Filler's "independent verification that . . . the records previously demanded by the Committee simply do not exist." Dec. 2, 2024 Br. at 6. Judge Newman represented to the Committee that Dr. Filler had "conscientiously reviewed those [medical] records and summarized them for the Committee" and that he had "assure[d] himself that there are no relevant records with respect to any problems as to Judge Newman's 'mental acuity . . . [or] memory loss.'" *Id.* at 7. Dr. Filler asserted in his report that no conditions "revealed by [Judge Newman's] medical records are ultimately contributory or relevant to her current mental state, and none suggest a cognitive decline or neurological deficits." Filler Rep. at 18.

As explained above, however, there *were* relevant medical records about memory loss and potential cognitive decline. In particular, "memory impairment" had been noted as a problem for Judge Newman a year before this proceeding started and was added to her problem list again in April 2024. *See, e.g.*, PN_000003; PN_000130; PN_000256; PN_000265; PN_000275; PN_000707; PN_001133; PN_001359. Dr. Filler acknowledged that those records were relevant to the issues being examined by the Committee and that there should be follow-up to find out why "memory impairment" was noted on a problem list. Filler Tr. at 129:13, 133:3, 134:11–12.

It appears that Judge Newman's representation that "Dr. Filler was given access to Judge Newman's *entire* medical file," Sept. 25, 2024 Mot. at 10 (emphasis in original), is likely also mistaken. Although the Committee has now seen some of the medical records that were shared with Dr.

Filler,[21] it appears that neither the Committee nor Dr. Filler and the other experts have seen all of them. And there are indications that some highly relevant information may exist in the records that have not yet been reviewed.

As noted above, multiple records show that "memory impairment" was added to Judge Newman's problem list on April 27, 2022. That date coincides with an office visit that Judge Newman had to see her cardiologist, Dr. [redacted] which shows up on an "encounter list" enumerating Judge Newman's encounters with various providers. PN_000126. But there is no medical record produced from that visit to Dr. [redacted] or explaining why "memory impairment" was added to Judge Newman's problem list. Some record of that visit must exist, and it would obviously be relevant to the issues before the Committee, but it is not among the records reviewed by Dr. Filler or the other experts. DeRight Suppl. Rep. at 2.

Similarly, another record shows that "memory impairment" appeared once again on Judge Newman's problem list in April 2024. PN_001133. Again, however, no record

[21] To accommodate Judge Newman's concerns about sharing her medical records with the Committee, the Committee agreed to the following arrangement. Judge Newman shared the entire set of medical records provided to Dr. Filler with counsel for the Judicial Council and with Dr. Noble, Dr. DeRight, and Dr. Johnson. It was agreed that counsel could then share with the Committee "any Medical Record" if counsel determines "after consultation with an expert, that information contained in the Medical Record is relevant to support an opinion of the expert, rebut the opinion of another expert, or otherwise demonstrate an error or omission in the report of another expert." Confidentiality Agmt. § (g) (Mar. 7, 2025). Accordingly, the Committee has received only a subset of the medical record documents made available to Dr. Filler.

reflects the decision of any medical provider to add that complaint to the problem list.[22]

E. Contrary to Judge Newman's Assertions, the Committee Does Not Have Sufficient Information to Determine that Judge Newman Suffers from a Disability.

Judge Newman argues that, if the Committee does not credit her experts and on that basis determine that she has no disability that would interfere with her performance of her duties, it can instead conclude the opposite and determine that she is disabled. July 21, 2025 Br. at 3, 42. In that regard, Judge Newman repeatedly insists that Dr. Noble has (improperly in her view) diagnosed her as having a cognitive impairment. *See id.* at 35 & n.30, 36–37, 48 & n.36. Those assertions misinterpret Dr. Noble's report.

Dr. Noble explicitly disclaimed making a diagnosis in both his report and deposition testimony. In the introduction to his report, he stated that his role was merely to "review" the expert reports submitted by Judge Newman and "provide an opinion on the soundness of the conclusions within those reports." Noble Rep. at 4. Since he had "not directly interviewed or examined Judge Newman" he did "not intend to diagnose her." *Id.* His only role, he

[22] Judge Newman dismisses the April 2024 record with the assertion that it should be regarded as a mistaken "regurgitat[ion]" of problems from an earlier list that had been resolved. July 21, 2025 Br. at 23 n.18. But the document itself suggests that it was not simply a mistaken copy of an outdated list, because it lists new information, including a condition marked "[o]nset: 04/01/2024." PN_001133. The document also eliminated old information from prior problem lists, such as bacteremia, pain of right hip, and cramps of lower extremity. *Compare* PN_001133, *with*, *e.g.*, PN_000003. In addition, given that there is no record explaining why items were put on the 2024 list—and given that Judge Newman would have control over any such record and has not provided it—the Committee is not persuaded to credit Judge Newman's speculation about the April 2024 record in the absence of evidence.

reiterated, was to show "how a workup should have been pursued." *Id.* Later in his report, Dr. Noble opined that Dr. Rothstein was "completely wrong" to say Judge Newman has just a "slight limitation of immediate memory" since she could not recall four out of five words on the MoCA and, in conjunction with the "collateral source information contained" in the employee affidavits, "a diagnosis of cognitive impairment is even more strongly suggested." *Id.* at 8–9. When Judge Newman's counsel asked Dr. Noble at deposition whether that sentence was "critiquing Dr. Rothstein's testing and diagnosis" or offering his "own substantive diagnosis," Dr. Noble answered: "I'm critiquing Dr. Rothstein's approach." Noble Tr. at 117:21–120:8.

Judge Newman also misunderstands Dr. Noble's criticism of the way Dr. Carney scored the clinical dementia rating (CDR) scale. On the CDR, Dr. Carney gave Judge Newman the best possible score, a zero, for all cognitive domains. Carney Rep. at 17. That includes a zero for "memory," indicating "no memory loss or slight inconsistent forgetfulness," and for "judgment and problem solving," indicating "[i]ndependent function at usual level in job." *Id.* Because of the "strong evidence in the history and on the MoCA examination" of "changes in [Judge Newman's] memory" and "strong evidence based on observations at work that her judgement and problem solving is at least questionable," Dr. Noble concluded that Dr. Carney mis-scored the CDR. Noble Rep. at 21. Dr. Noble concluded that Judge Newman earned at least a 0.5 score for both memory and problem solving and judgment. Had the CDR been scored properly, it would have suggested to Dr. Carney "that the correct diagnosis should have been MCI." *Id.* At his deposition, Dr. Noble repeatedly emphasized that "I'm not here to diagnose Judge Newman" just "to

review the records." Noble Tr. at 63:13–21; *accord id.* at 278:3 ("I'm not here to diagnose her.").[23]

Dr. Noble repeatedly made the point that, in order to arrive at a diagnosis, neuropsychological testing was the next necessary step. In line with his opinions, the Committee continues to believe that, without such testing, it cannot complete its task and reach a conclusion as to whether or not Judge Newman suffers from a disability.[24]

F. Judge Newman's Claims of Bias and Her Requests for Transfer Lack Merit.

As the discussion above demonstrates, Judge Newman has failed to provide any new evidence (including through the Filler report) that either (i) justifies reconsidering the

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[23] Judge Newman's assertions about Dr. Noble are particularly misplaced given that elsewhere in the same brief Judge Newman complains that the approach of Dr. Noble and Dr. DeRight was "to comb the record to 'raise questions' but not ever to opine that Judge Newman is cognitively impaired." July 21, 2025 Br. at 23.

[24] To the extent Judge Newman asserts that Dr. Johnson agreed that cognitive screening tests could eliminate the need for neuropsychological testing, *see* July 21, 2025 Br. at 33–34, that is incorrect. Dr. Johnson never stated that in a clinical setting a high performance on a cognitive screening test "would mean that no further testing would be recommended." *Id.* at 34. Instead, Dr. Johnson was describing a study on which he was one of more than a dozen co-authors. *See* Chase C. Hansen et al., *Cognitive Function and Patient-Reported Memory Problems After Radiotherapy for Cancers at the Skull Base: A Cross-Sectional Survivorship Study Using the Telephone Interview for Cognitive Status and the MD Anderson Symptom Inventory-Head and Neck Module*, 39 HEAD NECK 2048–56 (2017). As part of the study, researchers interviewed patients using the Telephone Interview for Cognitive Status (TICS), which Dr. Johnson explained, was "similar to other screening examinations, such as the Mini-Mental Status Examination or the Montreal Test of Cognitive Impairment." Johnson Tr. at 106:15–20. As he explained, the point of the study was to examine *whether* the TICS could be used as a low-cost method to assess cognitive status to "reasonably triage patients," because that was *not* the accepted clinical practice. *Id.* at 108:16–109:7. When asked if TICS was "considered a useful diagnostic tool," Dr. Johnson flatly said "no." *Id.* at 108:6–8.

Judicial Council's decision to maintain Judge Newman's suspension from hearing cases or (ii) demonstrates cause why the suspension should not be renewed. As in the past, Judge Newman argues that the Committee and/or the Judicial Council are inherently biased and that this matter should be transferred to another circuit. *See* July 21, 2025 Br. at 43–47. Judge Newman apparently intends to suggest that her claims about bias and about the need to transfer provide good cause to justify her refusal to cooperate with the Committee's orders. *Cf.* Rule 3(h)(1)(H) (defining "misconduct" to include "refusing, without good cause shown, to cooperate in the investigation of a complaint").

The Committee's and Council's prior orders have already addressed Judge Newman's claims concerning alleged bias and her insistence that this matter should be transferred. *See, e.g.*, 2023 R&R at 64–76, 86–92; 2023 Judicial Council Order at 5–7, 40–50. In brief, Judge Newman's arguments stem from the premise that all the judges on this court necessarily have some personal knowledge about her current mental state simply because they have interacted with her and that such knowledge alone raises a bias or related concern that demands finding different decisionmakers. This contention lacks merit.

As this circuit has explained in cases in the employment context, there is nothing inherently wrong with a deciding official having "background knowledge" about a situation or even the "facts of the case," as long as the official can decide the matter based on the record. *Norris v. SEC*, 675 F.3d 1349, 1354 (Fed. Cir. 2012). Familiar judicial ethics principles recognize the same. Charles Gardner Geyh & Kris Markarian, *Judicial Disqualification: An Analysis of Federal Law* 2020 WL 13401932 (3d ed., 2020) ("Judges often cannot avoid some acquaintance with the underlying parties or events that give rise to litigation, particularly in smaller communities. Acquaintance, by itself, will not require disqualification."). The Judicial Conference has so

recognized in the present Act setting. Rule 25 of the rules implementing the Act specifies standards for disqualification. The commentary to that rule makes it express that "a judge is not disqualified simply because the subject judge is on the same court" and that bias or prejudice warranting disqualification must be "created by circumstances other than an association with the subject judge as a colleague." Rule 25 cmt.

The Act itself is plainly structured to allow circuit judges—who will necessarily have some interaction with their colleagues in the same circuit—to sit on disability proceedings concerning those colleagues. The Act specifies that the chief judge of a circuit must receive and consider complaints about her colleagues and appoint herself as part of any special committee created to investigate. *See, e.g.*, 28 U.S.C. §§ 351–353 (requiring chief judge to receive and review complaint and form special committee); *see also* Rule 11(a) (requiring chief judge to review complaint), 12(a) (requiring the special committee to consist of chief judge that identifies complaint). And the Act specifies that it is the judicial council of the circuit that reviews actions by the chief judge. 28 U.S.C. § 352(c). These provisions necessarily contemplate keeping a misconduct or disability matter within the circuit where it arises, a point reinforced by the directive to the judicial council receiving a report from a special committee to "take such action as appropriate to assure the effective and expeditious administration of the business of the courts *within the circuit*." 28 U.S.C. § 354(a)(1)(C) (emphasis added). Congress did not even create a provision in the Act permitting a complaint to be transferred from one circuit to another. That mechanism was created by rules promulgated by the Judicial Conference, which specified that transfer of a matter involving an

investigation into judicial misconduct or disability should occur only in "exceptional circumstances." Rule 26.

To the extent that Judge Newman suggests that disqualification of all judges is required in the current proceeding because personal interactions with her necessarily give every judge on this court "personal knowledge of disputed evidentiary facts concerning the proceeding," 28 U.S.C. § 455, that is incorrect. The only issue at present is the matter of misconduct for noncompliance with a demand for information—in particular, the neuropsychological testing. The compelling justification for that demand is not in any way dependent on personal interactions between Judge Newman and other judges, which were not a basis for the Committee's recommendation on medical examinations, and thus no such interactions would come up as disputed facts in proceedings to address Judge Newman's misconduct in refusing to cooperate. In addition, there is a substantial likelihood that the results of complying with the information demand, specifically the testing, would produce a resolution of the underlying disability proceeding without need for resolving any disputed evidentiary facts of which the judges have personal knowledge. And if that turned out not to be so, the Chief Judge and Council would entertain a new request for transfer. *See, e.g.*, May 3, 2023 Order (denying transfer request "without prejudice to re-filing after Judge Newman has complied with the Special Committee requests for medical records and the evaluation and testing").

Judge Newman seeks to bolster her arguments for transfer at the present stage by asserting that Dr. Noble and Dr. DeRight emphasized the importance of "collateral source information" and insisting that the judges on the Committee and Judicial Council are "collateral sources." July 21, 2025 Br. at 43–44. In essence, Judge Newman argues that, because other judges are "collateral sources," information from them *must* be gathered to evaluate Judge

Newman and therefore they *must* be witnesses in this proceeding. *See id.* There are several flaws in that reasoning.

First, as noted above, at this stage in the proceeding, the question before the Committee (and the Judicial Council) is not whether Judge Newman has a disability. Instead, the issue is solely whether, based on the information gathered, the Committee had a reasonable basis for its information demand—particularly for its order of neuropsychological testing—and whether Judge Newman's continued failure to cooperate with that order constitutes misconduct and warrants a further sanction. Nothing in assessing that question requires obtaining additional collateral source information about Judge Newman's functioning.

Second, Dr. Noble and Dr. DeRight never suggested, as Judge Newman implies, that it was important to gather information from *all* collateral sources. Even if judges on this Court were among those who could be considered collateral sources, that does not suggest that information from them would be *necessary* to conduct an evaluation of Judge Newman.

Third, Judge Newman's assertion that other judges on the Court are the people "most familiar" with her cognitive functioning and thus are the best collateral sources for information is simply not accurate—especially now. Since the COVID-19 pandemic in 2020, when the Court operated largely remotely, Judge Newman has had very limited interactions with other judges on the Court. To be sure, she circulated opinions to her colleagues. But for the reasons Dr. Noble and Dr. DeRight have discussed, draft opinions do not provide a good source of collateral information because no one reviewing those drafts can know the extent to which they reflect Judge Newman's own work or the work of her clerks. Noble Tr. at 71:8–12; DeRight Tr. at 174:17–175:2. Judge Newman's own expert, Dr. Filler, acknowledged that judicial opinions are "often dependent on

assistance of law clerks and other staff members." Filler Rep. at 36. Judge Newman sat with other judges at oral arguments and post-argument conferences for voting until March 2023, but the number, extent, and nature of direct interactions between Judge Newman and any given judge were distinctly limited even in that period.[25] Since March 2023, Judge Newman has not been assigned new cases, and her interactions with other judges on the Court have been almost non-existent. Most judges on the Court have had so little interaction with Judge Newman that their most recent "collateral source information" would be two years out of date at this point. As a result, the judges on the Court are not currently useful sources of relevant collateral information at all.

It is worth reiterating the practical considerations that support the strong presumption of keeping a disability proceeding like this, at least at the present stage, within the circuit. As the Committee has previously explained, this case involves many of the factors that the Breyer Committee Report found to counsel *against* transfer. *See* 2023 R&R at 87–88; Implementation of the Judicial Conduct and Disability Act of 1980, Report to the Chief Justice of the Judicial Conduct and Disability Act Study Committee, 239 F.R.D. 116, 215 (Sept. 2006) (Breyer Committee Report). In an investigation involving alleged disability, the

[25] For example, during the six month period from October 2022 through March 2023, Judge Newman participated in oral argument on only eleven days. Each colleague averaged less than a single panel with Judge Newman. Chief Judge Moore did not sit on any panels with Judge Newman in that year, Judge Taranto and Judge Prost each sat on only two panels with Judge Newman during that year. The investigation proceeded on the basis of staff complaints, staff affidavits, Judge Newman's own emails, Judge Newman's extraordinary delay in resolving cases, staff EDR matters involving Judge Newman, and later expert reports, expert testimony, and Judge Newman's submissions regarding interviews and speeches she had given. No evidence from judges was collected in the investigation and no evidence from judges was considered.

Committee believes that knowledge of "local circumstances and personalities" is an advantage for an investigating committee. Breyer Committee Report at 215. Proximity to court staff—particularly because the judges and staff in this circuit all work in the same building—allowed the Committee to operate efficiently and expeditiously in investigating this matter. The Rules and Breyer Committee Report make clear that likely delays caused by transfer are a factor weighing *against* transfer. Indeed, "transfers may increase time and expense if there is the need to ship files, arrange witnesses, and handle other matters from a distance." Breyer Committee Report, 239 F.R.D. at 215.

In this matter, the Committee believes that the easy accessibility of court staff to the Committee allowed witnesses to volunteer information in a fashion that seems unlikely to have been replicated if the matter had been transferred to another circuit. In the earlier stages of this proceeding, many of the court staff members, including her own chambers staff reported incidents with Judge Newman to the Committee in almost real time. When the court's IT staff was called to Judge Newman's chambers to assist her, Judge Newman repeated unfounded claims that a computer had been stolen from her chambers, became "upset" and began "walking back and forth mumbling about how her computer and phone had been taken away," and became "so angry" that it left the IT Staff shaken and upset. May 18, 2023 [redacted] Aff. ¶ 1–2, 5–8 (attached as Exhibit 24); [redacted] Aff. ¶ 36 (attached as Exhibit 25). The staff immediately reported the information to the Clerk of Court who forwarded this information to the Committee which was able to speak to the employee on the same day. [redacted] Aff. ¶ 36.

When Judge Newman effectively threatened to terminate the employment of her judicial assistant for staying at his assigned workstation outside her chambers (which had been created as an alternative work arrangement under

the court's EDR procedures), he came to the Committee immediately visibly upset. *See* [redacted] Aff. ¶ 34; [redacted] Aff. ¶ 9 (attached as Exhibit 29). When one of Judge Newman's law clerks declined to work on Judge Newman's defense in this matter (which is not court work) and found that he could no longer tolerate the atmosphere in her chambers, he came to the Committee to explain his concerns and ask for help. *See* [redacted] Aff. ¶¶ 6–8, 17 (attached as Exhibit 28). Our Clerk of Court has come to the Committee on several occasions to report troubling interactions and accusations by Judge Newman detailed in his affidavits. None of these meetings were scheduled and none were requested by the Committee. In each of these instances, the employees came to the Committee to report concerns. And for several of these employees, not only was the Committee able to receive their testimony, but where possible, alternative work arrangements were made to lessen the impact of these disturbing exchanges. The efficient undertaking of support and protection of employees was enabled by the matter remaining within the circuit.

So, too, was the receipt of information highly relevant to the proceeding. In 2023, incidents such as these between staff members and Judge Newman were occurring weekly or multiple times per week, and the Committee received almost real-time information about such developments. The Committee believes that witnesses would have been chilled in their reporting if they had been required to contact federal judges in another circuit who were not known to them. The result would likely have been curtailment of the receipt of information needed for fulfillment of the aims of the Act. Careful attention to what has been and is actually at issue—refusal of an essential informational demand resting on a basis raising no persuasive concerns about involvement of the Council's judges—avoided such harm to the proper functioning of the Act's processes for protecting the public.

Finally, Judge Newman argues that a transfer is warranted because she and the Committee have reached an impasse given that she will never agree "to undergo any further testing." July 21, 2025 Br. at 47. The Committee disagrees in principle with the logic behind that argument. By refusing to cooperate with an investigation, a judge should not be able to dictate that a transfer of her case is required. In addition, the Committee observes that Judge Newman previously asserted with the same certainty that she would never share her medical records with the Committee, but she has now relented on that position and shared a substantial body of her medical records. In due course, she may equally reconsider her position on taking the ordered neuropsychological testing.[26]

G. Judge Newman's Complaints Concerning Procedural Defects in the September 6 Order Are Misplaced.

Judge Newman asserts that the Council's order of September 6, 2024 suffered from procedural flaws that somehow preclude renewing the sanction of a one-year

[26] Judge Newman also argues that the Judicial Council should refer this complaint to the Judicial Conference pursuant to 28 U.S.C. § 354(b)(2)(B). *See* July 21, 2025 Br. at 47. That provision applies only where the Judicial Council determines that a judge "may have engaged in conduct . . . which, in the interest of justice, is not amenable to resolution by the judicial council." 28 U.S.C. § 354(b)(2)(B). Nothing about Judge Newman's conduct in resisting the Committee's orders is not amenable to resolution by the Judicial Council, which has acted unanimously at each stage of this proceeding, and thus a referral to the Judicial Conference is not warranted. *Cf.* Breyer Committee Report, 239 F.R.D. at 183 (suggesting that transmittal to the Judicial Conference under § 354(b)(2)(B) is an option to consider where a complaint involves "a contentious matter that divided the court's and circuit's judges.").

suspension from hearing cases. July 21, 2025 Br. at 5. None of her arguments has merit.

First, Judge Newman complains that the order was not "accompanied by a memorandum setting forth the factual determinations on which it is based and the reasons for the council action." Rule 20(f). Rule 20(f) expressly states that, to fulfill that requirement, the Judicial Council "may incorporate all or part of any underlying special committee report." In accordance with that provision, the September 6 Order stated, "[T]he Judicial Council hereby unanimously adopts the report and recommendation of the Special Committee." 2024 Judicial Council Order at 1.

Second, Judge Newman complains that the 2024 Judicial Council Order failed to specify that the initial complaint was identified under Rule 5 and failed to advise Judge Newman of her "'right to review of the judicial council's decision as provided in Rule 21(b).'" July 21, 2025 Br. at 5 (quoting Rule 20(f)). Nothing in the Rules suggests that errors on these points undermines the validity of Judicial Council action, and the Committee also concludes that, especially in the circumstances of this case, these errors were harmless. Judge Newman was well aware of the origins of this proceeding and well aware of her right to seek review before the Judicial Conduct and Disability Committee (JC&D Committee) of the Judicial Conference—a right that she exercised earlier in this proceeding when she sought review of the Judicial Council's order of September 20, 2023 initially imposing a one-year suspension from cases. Moreover, rather than seeking review by the JC&D Committee of the 2024 Judicial Council Order, Judge Newman chose to file a Motion for Reconsideration before the Judicial Council. As the JC&D Committee made clear in an order of October 3, 2024, the JC&D Committee then held proceedings on the 2024 Judicial Council Order in abeyance pending resolution of the Motion for

Reconsideration, such that no deadlines have run and Judge Newman still may seek review before the JC&D Committee.

Third, Judge Newman's complaint that the JC&D Committee has not considered and issued some ruling upon the 2024 Judicial Council Order is even more misplaced. *See* July 21, 2025 Br. at 5. As Judge Newman is well aware, the JC&D Committee ordered that proceedings before it related to the 2024 Judicial Council Order would be "held in abeyance pending the resolution of the motion for reconsideration pending before the Federal Circuit Judicial Council." Oct. 3, 2024 Order. Judge Newman's own decision to pursue further remedies before the Judicial Council (and her requests for extensive process and extensions of time) are the reason that no further action has occurred before the JC&D Committee.

III. RECOMMENDED SANCTION FOR CONTINUING MISCONDUCT

The Committee continues to believe that Judge Newman's conduct refusing to undergo the medical examinations ordered by the Committee is a serious matter. Her conduct prevents the Committee from completing the process established by Congress for determining whether a life-tenured judge suffers from a disability. Litigants before this Court deserve to have confidence that the judges ruling on their matters do not suffer from a cognitive impairment that may affect the resolution of their cases. They also deserve to have confidence that the mechanisms Congress established for addressing judicial disability function properly and that a judge with such an impairment cannot derail the process by refusing to cooperate. The Committee and the Judicial Council have an overriding duty to ensure that the judges on this Court are able-minded and capable of performing their jobs. We also have a responsibility to court employees to ensure that they have a workplace free from hostile and abusive behavior. When

serious concerns are raised about a judge's fitness, they must be taken seriously and addressed expeditiously, and all judges must recognize their duty to facilitate that process.

Under the circumstances, therefore, the Committee believes that Judge Newman's continued refusal to cooperate by undergoing the necessary medical examinations constitutes a serious form of continuing misconduct. The additional process Judge Newman sought has all been granted and the evidence flowing from it further supports the Committee's original order that Judge Newman should undergo full neuropsychological testing, the same testing her expert, Dr. Rothstein, recommended back in 2023.

We recommend a one-year sanction during which Judge Newman will not be permitted to hear cases at the panel or en banc level, subject to consideration of renewal if the refusal to cooperate continues after that time and subject to consideration of modification or rescission if Judge Newman alters her conduct and cooperates with the Committee. This sanction is not for past misconduct. Instead, it addresses Judge Newman's *continuing misconduct* through her continuing refusal to cooperate with the Committee's orders.

As noted, we recommend that the sanction should be subject to consideration of modification or rescission if Judge Newman alters her behavior by cooperating with the Committee's orders. At this point, cooperation would require Judge Newman to undergo the medical examinations previously ordered by the Committee before neutral providers chosen by the Committee. With respect to the Committee's prior orders concerning medical records, the Committee recognizes that Judge Newman has now produced a significant number of medical records. To be sure, some of those records have raised more questions than they have answered. For example, the records show "memory impairment" as a problem for Judge Newman, but the

records provided do not include any explanation concerning which medical provider noted that as a problem or why. It appears that additional, particularly relevant medical records exist but have not been produced. And such records would be useful for the neurologist and neuropsychologist chosen by the Committee to evaluate Judge Newman. Nevertheless, the Committee believes that the medical examinations themselves are the most important point for Judge Newman to establish cooperation with the Committee's orders. Accordingly, the Committee does not recommend requiring the production of additional medical records for Judge Newman to establish her cooperation.

If Judge Newman undergoes the medical examinations specified by the Committee with independent medical providers identified by the Committee, the Committee will be able to complete its investigation and make a recommended finding as to whether Judge Newman suffers from a disability. Until Judge Newman cooperates and permits the Committee to make a finding on that issue, her continued non-cooperation justifies suspending case assignments for the fixed period of an additional year, or at least until she ceases her misconduct and cooperates such that the Committee can complete its investigation, whichever comes sooner.

This Report & Recommendation has been adopted by the Committee unanimously.[27]

[27] Accompanying this report is a statement of the vote. *See* Rule 17.

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.

STATEMENT OF THE VOTE

Pursuant to Rule 17 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, the Committee accompanies its report and recommendation to the Federal Circuit Judicial Council in this matter with this statement of the vote. The Committee unanimously adopts its report and recommendation. There are no separate dissenting or concurring statements by any Committee member.