

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY
OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

C.C.D. No. 25-02

IN RE COMPLAINT NO. 23-90015

PROCEEDING IN REVIEW OF THE ORDER AND MEMORANDUM
OF THE JUDICIAL COUNCIL OF FEDERAL CIRCUIT
J.C. No. FC-23-90015

MEMORANDUM OF DECISION

(Filed March 24, 2026)

Present: Judges Timothy M. Tymkovich., Chair, John D. Bates, Patricia A. Gaughan,
Phyllis J. Hamilton, M. Margaret McKeown, D. Brooks Smith, Carl E. Stewart.

MEMORANDUM OF DECISION

This matter is before the Judicial Conduct and Disability Committee (“Committee”) on petition of Judge Pauline Newman for review of the Judicial Council of the U.S. Court of Appeals for the Federal Circuit’s Order of August 29, 2025. The Committee denies this petition for review under 28 U.S.C. § 357 and Rules 21(a) and 21(b)(1)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (“Rules”).

In September 2024, the Judicial Council of the Federal Circuit suspended the assignment of new cases to Judge Newman. It did so after Judge Newman refused to undergo a neuropsychological examination it had ordered as part of an investigation into her fitness for judicial office. Our review is limited to questions stemming from that refusal and does not address or express any view on the related disability investigation or Judge Newman’s ability to accomplish her duties. We conclude that the Federal Circuit Judicial Council’s renewal of Judge

Newman’s suspension is neither contrary to the Judicial Conduct and Disability Act (“the Act”) nor unconstitutional; and that the Federal Circuit Judicial Council’s denial of her request to transfer the complaint does not violate her Fifth Amendment right to procedural due process.

I. Procedural History¹

On September 6, 2024, the Judicial Council of the Federal Circuit issued an order finding that Judge Newman’s refusal to cooperate with the investigation persisted and that she had not presented evidence that undermined the concerns about her ability to discharge the duties of office or that established good cause for refusing to undergo a medical examination. The Judicial Council again found that the medical examinations requested by the Special Committee were necessary. The Judicial Council ordered that Judge Newman not be permitted to hear or participate in any cases for a period of one year, subject to renewal if Judge Newman’s failure to cooperate persists or modification if Judge Newman agrees to cooperate.

On September 25, 2024, Judge Newman filed a motion for reconsideration of the Judicial Council’s order because Judge Newman had undergone an examination by a neurosurgeon who found her able to discharge the duties of office. On October 1, 2024, the Judicial Council directed the Special Committee to consider the motion for reconsideration and the accompanying

¹ A detailed recitation of the factual background can be found in this Committee’s earlier decision: *In re Complaint No. 23-90015*, C.C.D. 23-01 (U.S. Jud. Conf. Feb. 7, 2024) available at: <https://www.uscourts.gov/file/document/ccd-no-23-01-february-7-2024>. On May 5, 2023, Judge Newman filed a lawsuit against the Chief Circuit Judge, the Special Committee, and the Judicial Council of the Federal Circuit alleging that the Federal Circuit’s actions in the JC&D proceeding violated her constitutional rights. On February 12, 2024, the district court denied Judge Newman’s motion for a preliminary injunction and granted, in part, the Federal Circuit’s motion to dismiss some of Judge Newman’s claims. On July 9, 2024, the district court dismissed Judge Newman’s remaining claims. Judge Newman appealed. On August 22, 2025, the court of appeals affirmed the district court’s dismissal. Rehearing en banc was denied on December 29, 2025. Judge Newman filed a petition for writ of certiorari on March 12, 2026.

medical report to determine whether they constitute changed circumstances such that the September 6, 2024 order should be modified or rescinded.

On February 7, 2025, the Special Committee issued an order on Judge Newman's motion for reconsideration. The Special Committee retained three medical experts to review the report prepared by the neurosurgeon who evaluated Judge Newman and provide their opinions on the statements made in the report. The Special Committee's medical experts conveyed reservations with the neurosurgeon's report and ultimately disagreed with his conclusion that Judge Newman shows no signs of cognitive impairment. The Special Committee ordered Judge Newman to produce the medical records relied on by the neurosurgeon by February 20, 2025, and to submit a response to the opinions of the Special Committee's three medical experts by April 8, 2025. On March 25, 2025, Judge Newman's counsel submitted the neurosurgeon's response to the Special Committee's three medical experts.

On July 28, 2025, the Special Committee issued a detailed report and recommendation finding, among other things, that: Judge Newman's expert reports do not establish good cause for refusing to undergo a medical exam; the experts retained by the Special Committee confirmed that the Special Committee was correct to order that Judge Newman undergo neuropsychological testing; and additional evidence confirms that the testing ordered by the Special Committee was reasonable. The Special Committee recommended that Judge Newman be suspended from hearing cases for one year, subject to reconsideration if she cooperates with the investigation or renewal if the refusal to cooperate persists. On August 29, 2025, the Judicial Council issued an order adopting the Special Committee's conclusions and recommendations.

On October 9, 2025, Judge Newman filed with this Committee a petition for review of the Federal Circuit Judicial Council's August 29, 2025 order renewing her suspension from new case assignments for one year based on her failure to cooperate with the Special Committee's

investigation. On October 13, 2025, the Committee issued an order requesting supplemental briefing from Judge Newman on her claim that the Federal Circuit’s denial of the request to transfer the complaint violates her Fifth Amendment right to due process of law. As the petition for review failed to argue that Judge Newman has been deprived of a life, liberty, or property interest protected by the Fifth Amendment, the Committee requested supplemental briefing on this argument and noted that failure to do so would result in the waiver of this issue due to inadequate briefing. On November 3, 2025, Judge Newman submitted supplemental briefing.

II. Discussion

We review circuit judicial council orders for errors of law, clear errors of fact, or abuse of discretion. Rule 21(a); see also *In re Complaint of Judicial Misconduct*, 747 F.3d 869, 872 (U.S. Jud. Conf. 2014) (finding that the circuit judicial council did not abuse its discretion); *In re Complaint of Judicial Misconduct*, 664 F.3d 332, 334–35 (U.S. Jud. Conf. 2011) (deferring to findings of circuit judicial council and overturning them only if clearly erroneous). Our review necessarily depends on the record before us and gives deference to the circuit judicial council’s consideration of the special committee’s review of the evidence. See *In re Memorandum of Decision of Judicial Conference Comm. on Judicial Conduct & Disability*, 517 F.3d 563, 569 (U.S. Jud. Conf. 2008) (“[W]e will defer to the findings of the Judicial Council and the special committee, and will overturn those findings only if, upon examination of the record, they are clearly erroneous.”).

Judge Newman argues that: (1) the Committee should consider the merits of her as-applied constitutional arguments;² (2) the Federal Circuit Judicial Council’s renewal of her suspension is contrary to the Act and is unconstitutional; and (3) the Federal Circuit Judicial

² As evidenced by the discussion *infra*, the Committee has considered the merits of Judge Newman’s as-applied constitutional arguments.

Council’s denial of her request to transfer the complaint violates her Fifth Amendment right to procedural due process. For the reasons explained below, we deny the petition for review and affirm the Judicial Council’s order.

A. The Renewal of the Suspension is not Contrary to the Act

Judge Newman argues that the ongoing suspensions exceed the authority granted by the JC&D Act. Section 354(a)(2)(A)(i) of the Act provides that a judicial council may “order[] that, on a temporary basis for a time certain, no further cases be assigned to the judge whose conduct is the subject of a complaint.” *See also* Rule 20(b)(1)(D)(ii) (the judicial council may order “that no new cases be assigned to the subject judge for a limited, fixed period.”). She argues that judicial councils have understood “temporary,” as it is used in § 354(a)(2)(A)(i), “to refer to a year at most, since that was the longest suspension any judicial council had ever imposed before now.” Petition for Review at 8. According to Judge Newman, the renewable nature of the suspension violates the Act’s requirement that suspensions be “for a time certain.” 28 U.S.C. § 354(a)(2)(A)(i). Judge Newman argues that the suspension is “permanent” unless she agrees to undergo the medical examination requested by the Judicial Council, and that the Judicial Council cannot circumvent the Act’s requirements by renewing the suspension annually. Petition for Review at 9. She further argues that the extension of a suspension is unprecedented and that “[n]o other judicial council ever has used this device to attempt to extend a suspension beyond an initial stated ‘time certain.’” *Id.* at 9–10.

It is not accurate that a one-year suspension is the longest suspension ever imposed by a judicial council. While many suspensions have been for a one-year duration, this does not mean that judicial councils have understood that “temporary” means a suspension can only last a year.

For example, the complaint against Judge G. Thomas Porteous, Jr. illustrates that the extension of a suspension by a judicial council is *not* unprecedented.³

The Act does not define “temporary” as it is used in § 354(a)(2)(A)(i).⁴ Under a plain language understanding of the word “temporary,” the Act authorizes a suspension for a limited time with a certain end date. By setting the suspension for a period of one year, subject to reconsideration if Judge Newman undergoes a medical examination and subject to renewal if the failure to cooperate persists, the Judicial Council of the Federal Circuit ensures that the suspension is reviewed regularly to determine whether it is still appropriate under the circumstances. The lengthy consideration given to Judge Newman’s motion for reconsideration, which included permitting her to depose the Special Committee’s experts, demonstrates that the Judicial Council’s decision to renew the suspension is not simply a rubberstamp.

³ Judge G. Thomas Porteous, Jr. initially received a temporary suspension of certain case assignments “pending a decision by the Judicial Conference” on the Fifth Circuit’s referral of the complaint to the Judicial Conference for consideration of impeachment. *In re: Complaint of Judicial Misconduct against United States District Judge G. Thomas Porteous, Jr. under the Judicial Conduct and Disability Act of 1980*, No. 07-05-351-0085 (5th Cir. Jud. Council Dec. 20, 2007). Approximately nine months later, the Judicial Council suspended new case assignments to Judge Porteous for two years. *In re: Complaint of Judicial Misconduct against United States District Judge G. Thomas Porteous, Jr. under the Judicial Conduct and Disability Act of 1980*, No. 07-05-351-0085 (5th Cir. Jud. Council Sept. 10, 2008). The two-year suspension was extended by the Judicial Council two years later, pursuant to § 354(a)(2)(A)(i). *In re: Complaint of Judicial Misconduct against United States District Judge G. Thomas Porteous, Jr. under the Judicial Conduct and Disability Act of 1980*, No. 07-05-351-0085 (5th Cir. Jud. Council Sept. 8, 2010). Ultimately, the Judicial Council of the Fifth Circuit issued three different suspensions against Judge Porteous.

⁴ The Senate Report to an earlier bill similar to the JC&D Act explained that “the use of the word ‘temporary’ is designed to convey the clear intention of the committee that this sanction is to be used only on rare occasions and only as an interim sanction. For example, the refusal of the council to allow a judge to accept further cases while undergoing treatment for alcoholism or until the reduction of an excess backlog of cases are examples where this sanction may be invoked.” S. Rep. 96-362, 4, 1980 U.S.C.C.A.N. 4315, 4324. And that limitation is consistent with the JC&D Act’s absolute bar on removal of an Article III judge from office. *See* 28 U.S.C. § 354(a)(3)(A).

As explained in the Special Committee’s July 28, 2025 report, simply allowing Judge Newman to hear cases without undergoing the medical testing requested by the Special Committee and the Judicial Council could have serious effects on litigants and prejudice the effective and expeditious administration of the business of the courts. As elaborated in the Special Committee’s report:

Judge Newman’s conduct in 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.

Special Committee Report, pp. 87-88 (July 28, 2025). The Judicial Council has determined that the requested medical testing is necessary to determine whether Judge Newman suffers from a disability that prevents her from discharging the duties of office.

Under the circumstances, the Judicial Council’s renewal of the suspension for one year, subject to reconsideration if Judge Newman cooperates with the investigation by undergoing a medical examination, is not contrary to the Act’s requirement that a suspension be “on a temporary basis for a time certain.” 28 U.S.C. § 354(a)(2)(A)(i). When the suspension was renewed most recently, the Special Committee extensively considered additional expert reports and evidence that could have resolved the proceeding. For example, this new evidence could have (1) persuaded the Special Committee that its original testing order was not justified, (2) persuaded the Special Committee that there was sufficient evidence of disability so that a testing order was not necessary, (3) persuaded the Special Committee that Judge Newman’s

conduct merited referral for impeachment, or (4) persuaded Judge Newman to comply with the testing order. The Special Committee’s careful review demonstrates that the facts of the JC&D proceeding had meaningfully evolved, so that at the time of the second renewal resolution of the proceeding remained possible. And where the prospect for resolution is a real option, a renewed suspension remains “temporary.” Thus, the circumstances of the second renewal—based on a much-expanded factual record—warrant upholding the Judicial Council’s judgment.

If this Committee had an opportunity to review (and had upheld) the first renewal, the consideration of the second renewal might be different. But this is the first examination of a renewal of the suspension of case assignments under § 354(a)(2)(A)(i), and it is based on the Judicial Council’s consideration of a new, greatly expanded factual record. The Act envisions that any suspension must be based on its own facts and circumstances to qualify as temporary under § 354(a)(2)(A)(i). A judicial council must approach each application of that power based on new facts and circumstances that emerge during its consideration of the remedy for ongoing complaints that are not yet resolved.

Next, Judge Newman argues that the suspensions “usurp Congress’s exclusive control over impeachment and removal” and that the Judicial Council is required to refer her for impeachment “given the Council’s conclusion that her misconduct is so serious it requires an unprecedented three-year suspension.” Petition at 1, 11. That position does not comport with the Act. The Act requires a judicial council to certify to the Judicial Conference any complaint where the judicial council determines that a judge “may have engaged in conduct which might constitute one or more grounds for impeachment under article II of the Constitution.” 28 U.S.C. § 354(b)(2)(A). Grounds for impeachment under Article II of the Constitution are “Treason, Bribery, or other high Crimes and Misdemeanors.” U.S. Const. art. II § 4.

A judicial council has never referred a judicial conduct and disability complaint to the Judicial Conference for consideration of impeachment based on failure to cooperate with an investigation into whether the judge suffers from a disability. All of the impeachment referrals from the last twenty years were premised on extremely serious misconduct: sexual misconduct and lying to the Special Committee; repeated instances of abuse of a spouse and lying to the Special Committee; being convicted of a felony; and committing perjury and accepting bribes. The Judicial Council's failure to refer the complaint to the Judicial Conference for consideration of impeachment is not erroneous. Moreover, Congress does not need a certificate of impeachment from the Judicial Conference to initiate impeachment proceedings. Nor is it compelled to act on such a certificate from the Judicial Conference. (In fact, Congress did not act on the last two certificates of impeachment that the Judicial Conference issued). Thus, Judge Newman's argument that the suspensions usurp Congress's control over impeachment and removal are not persuasive.

B. The Renewable Suspension is not Unconstitutional

Judge Newman argues that the renewable suspensions are unconstitutional because they “constructively remov[e] Judge Newman from her judicial office.” She argues that the exercise of judicial power under Article III “is the ability to ‘make authoritative and final judgments in individual cases.’” Petition for Review at 12 (citing William Baude, *The Judgment Power*, 96 Geo. L.J. 1807, 1815 (2008)). Thus, she argues that preventing a judge from hearing cases is constructive removal from office. While she concedes that “[c]ourts have not decided precisely when an administrative halt in case assignments becomes constructive removal,” she explains that Judge Edwards' concurrence in *Hastings v. Judicial Conference of the United States* cautioned that suspensions may amount to “the functional equivalent of removal.” 770 F.2d 1093, 1109 (D.C. Cir. 1985) (Edwards, J. concurring). In Judge Newman's view, the ongoing

suspension is unconstitutional because it constructively removes her from office and the impeachment process is the only lawful way to remove a judge from office.

Judge Newman further argues that the renewable suspension contravenes Article III's guarantee of life tenure. Article III provides that judges "shall hold their Offices during good Behavior" which Judge Newman argues means that a judge can only be removed through impeachment. She argues that the Judicial Council acted unconstitutionally by "arrogating to itself both the removal power and the ability to adjudge what constitutes 'good Behavior.'" Petition for Review at 14.

Under Article III, Section 1 of the Constitution, "[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." U.S. Const. art. III § 1. Article III further provides that judges "shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office." *Id.* Federal judges are subject to removal from office by impeachment "for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." U.S. Const. art. II § 4. But, "the impeachment process has not been the only check on federal judges who may have abused their independence, or the only assurance of their accountability. Other constraints and influences—institutional and individual, formal and informal—have traditionally played, as they play today, an important role." *The Report of the National Commission on Judicial Discipline and Removal*, 152 F.R.D. 265, 276 (1993) (*Report of the NCJDR*). In sum, the "judicial power" referenced in Article III belongs to the judiciary, not individual judges. *See N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 US 50, 59–60 (1982) ("The judicial power of the United States must be exercised by courts having the attributes prescribed in Art. III. . . . our

Constitution unambiguously enunciates a fundamental principle – that the ‘judicial Power of the United States’ must be reposed in an independent Judiciary.”)

Judge Newman cites no authority for the proposition that “the exercise of judicial power is the principal feature of judicial office.” Petition for Review at 12. While she includes a quote from a law review article (judicial power is the ability “to make authoritative and final judgment in individual cases”), the article focuses on the exercise of judicial power by the courts as a whole, rather than as a power that each judge must exercise. *See* William Baude, *The Judgment Power*, 96 Geo. L.J. 1807, 1809 (2008) (arguing “that the judicial power vested in Article III courts allows them to render binding judgments that must be enforced by the Executive Branch so long as those courts have jurisdiction over the case.”). Moreover, Judge Newman includes a quotation from the Report of the NCJDR that purports to support her argument (“[u]nder Article III ... a judge is legally eligible to exercise judicial power, because the judicial power of the United States is vested in courts made up of judges”) but that quotation is taken out of context. *See Report of the NCJDR*, 152 F.R.D. 265, 284 (1993). Additional analysis in the Report further undermines Judge Newman’s argument concerning removal and the exercise of judicial power:

The principal argument against prosecution of judges while they are in office is that incarceration is equivalent to removal, because it may make it impossible for the judge to exercise judicial power. This argument rests on the assumption that if something is the functional equivalent of removal, then it should be treated as removal for purposes of constitutional analysis. Functional arguments, however, are of limited value in interpreting the structural aspects of the Constitution. Rather, as the recent practice of the Supreme Court indicates, on structural questions the appropriate method of interpretation is relatively literalistic and formal.

Id.

The difference between removal from office and removal of a caseload has been explained as follows:

Removal results in the permanent loss of the judge's power to decide cases or controversies and the forfeiture of any pension, benefits, and opportunity to serve on judicially related panels such as the Judicial Council. Removing a caseload because of illness or a backlog is not the same as permanent removal and disqualification as the

result of a successful impeachment and conviction. Acknowledging that judicial councils have the ability to make administrative decisions curtailing a judge's responsibilities does not mean that judges either lose their titles or have been rendered permanently disabled from discharging their constitutional duties as judges.

Michael J. Gerhardt, *The Constitutional Limits to Impeachment and Its Alternatives*, 68 Tex. L. Rev. 1, 72 (1989) (hereinafter *Constitutional Limits*). This explanation is consistent with the conclusion that a judicial council's reassignment of an indicted or imprisoned judge's cases "would not effect a removal," where "[t]he judge would continue to receive salary and would continue to hold office, because he or she would still be eligible to exercise judicial authority." *Report of the NCJDR*, 152 F.R.D. 265, 285-86 (1993); see also Gerhardt, *Constitutional Limits*, at 81 ("[i]n the case of 'removal from office,' the framers had in mind the formal termination of a commission or of tenure in office.").

Of note, the National Commission on Judicial Discipline and Removal explicitly considered whether it is constitutional for a circuit judicial council to reassign cases and control the judicial duties of a judge who has become disabled. The Commission concluded "The transfer of a judge's cases is not the equivalent of removal from office. . . . Transferring cases when a judge has become permanently, or temporarily, disabled mentally or physically is a necessary exercise of power ancillary to the resolution of cases and controversies." *Report of the NCJDR*, 152 F.R.D. 265, 286 (1993). The Commission further explained that

Transfers related to disability situations do not interfere with the constitutional vesting of the judicial power in the courts. Although the Constitution establishes a form of judicial independence, it does not say or imply that judges and courts are to be free from any influence that might affect their work. Rather, judges and courts possess the degree of independence set out in the Constitution, no less and no more.

Id. at 287. Here, the Judicial Council did not reassign any of Judge Newman's cases; she was allowed to complete her work on these cases during her suspension.

Ultimately, Judge Newman's failure to cooperate with the Special Committee's investigation by undergoing the requested medical testing has prevented the Judicial Council

from being able to make a fully informed determination as to whether Judge Newman is suffering from a disability that prevents her from discharging the duties of office. The Judicial Council's temporary suspension of case assignments pursuant to its authority under 28 U.S.C. § 354(a)(2)(A)(i) does not amount to removal from office. Unlike removal from office through impeachment, a judge subject to a temporary suspension keeps the judicial salary and title.

C. The Denial of the Request to Transfer Does Not Violate Judge Newman's Fifth Amendment Right to Procedural Due Process

Judge Newman argues that the refusal to transfer the complaint to another circuit violates her right to due process. Because the petition for review failed to adequately brief a Fifth Amendment procedural due process claim, the Committee requested supplemental briefing from Judge Newman. In her supplemental briefing, Judge Newman argues that "she has a property interest in exercising the judicial power of the United States" and that "she has a liberty interest in protecting her medical records and in avoiding compelled medical examinations." Supplemental Brief at 1.

To establish a violation of her Fifth Amendment right to procedural due process, Judge Newman must first show that she has been deprived of a protected property or liberty interest. *See Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 59 (1999) ("The first inquiry in every due process challenge is whether the plaintiff has been deprived of a protected interest in 'property' or 'liberty.'") Her arguments are discussed below.

1. Judge Newman Has Not Been Deprived of a Protected Property Interest

Judge Newman argues that she has a property interest in exercising "judicial power" that derives from Article III, § 1 of the Constitution. However, she has cited no cases in support of this conclusion and, as explained above, the "judicial power" referenced in Article III, § 1 of the Constitution belongs to the courts, not individual judges. *See N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 US 50, 59-60 (1982). Judge Newman asserts that "property

interests are ‘created and their dimensions are defined by existing rules or understandings that stem from an independent source.’” Supplemental Brief at 2 (citing *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972)). However, she does not address the Court’s statement immediately prior to the line quoted, where the Supreme Court explained that “**Property interests, of course, are not created by the Constitution.**” *Id.* (emphasis added). Here, the source of the property interest she claims undoubtedly comes directly from Article III of the Constitution.

Judge Newman next argues that she has a property interest in exercising judicial power by hearing cases. Judge Newman claims that not only is she entitled to exercise judicial power while she remains in office, she is “*obligated*” to exercise that power while in office under Canon 3 of the Code of Conduct for United States Judges. Her reliance on the Code of Conduct is misplaced. Canon 3 of the Code of Conduct states that “A judge should perform the duties of the office fairly, impartially and diligently.” While Canon 3(A)(2) provides that a judge “should hear and decide matters assigned, unless disqualified,” she has not been prevented from hearing any matters that have been assigned to her. She has been temporarily suspended from new case assignments but was not prevented from completing her work on her existing case assignments. Judge Newman’s argument that Canon 3(A)(2) “requires both that chief judges must assign cases to every judge and that assigned judges shall decide them—meaning that a chief judge’s refusal to assign cases to a judge effectively removes that judge from office,” is wholly unsupported by the plain language of the Code.

Judge Newman is still an active judge on the Federal Circuit, maintains an office in the courthouse, employs a law clerk, and receives her salary and benefits. Judge Newman cannot have been deprived of a property interest in an office she still holds. *See Abcarian v. McDonald*, 617 F.3d 931, 941-42 (7th Cir. 2010) (“One simply cannot have been denied his liberty to pursue

a particular occupation when he admittedly continues to hold a job—the same job—in that very occupation.”). To the extent she argues that she has a property interest in exercising judicial power by hearing cases, she has not identified a non-constitutional source of that interest. In sum, Judge Newman’s argument that she has been deprived of a constitutionally protected property interest is not persuasive.

2. Has Judge Newman Adequately Alleged a Protected Liberty Interest?

Judge Newman argues that she has a constitutionally protected liberty interest in her “personal medical records and in avoiding compelled neuropsychological examinations” that the Judicial Council has violated without providing Judge Newman due process of law. Her briefing on this point is conclusory, scant, and contains little analysis.⁵ However, for the purposes of analyzing the merits of Judge Newman’s procedural due process claim, the Committee assumes without deciding that Judge Newman has alleged a protected liberty interest.

3. Judge Newman Has Not Been Denied Procedural Due Process

Judge Newman argues that the Judicial Council’s refusal to transfer the complaint has deprived her of due process of law. As explained by the D.C. Circuit in *English v. District of Columbia*, “[b]eyond the basic requirements of notice and an opportunity to be heard, the precise requirements of procedural due process are flexible.” 717 F.3d 968, 972 (D.C. Cir. 2013). None of the cases cited by Judge Newman support the contention that due process required the Judicial Council to disqualify itself and transfer the complaint. Essentially, she argues that due process requires the disqualification of a decision maker when the circumstances present a risk of actual bias or create the appearance of bias so substantial that it would tempt the average adjudicator. She cites *Gibson v. Berryhill*, 411 U.S. 564, 579 (1973), and *In re Murchison*, 349 U.S. 133

⁵ See *Nichols v. Enterasys Networks, Inc.*, 495 F.3d 185, 190 (5th Cir. 2007) (considering an issue waived for inadequate briefing where the analysis is deficient).

(1955), in support of her argument that it is a due process violation for an adjudicator with an indirect professional or institutional interest in the outcome of the matter not to disqualify him or herself. But *Gibson* involved a financial or pecuniary interest that is not at issue here. See *Gibson*, 411 U.S. 564, 579, (“[t]hose with substantial pecuniary interest in legal proceedings should not adjudicate these disputes;” “the pecuniary interest of the members of the Board of Optometry had sufficient substance to disqualify them.”). And in *Withrow v. Larkin*, the Supreme Court explained “*Murchison* has not been understood to stand for the broad rule that the members of an administrative agency may not investigate the facts, institute proceedings, and then make the necessary adjudications.” 421 U.S. 35, 53 (1975).

Judge Newman argues that due to the “eyewitness conflicts” and a “pattern of bias,” the refusal to transfer the complaint amounts to a denial of due process. Petition for Review at 17. She argues that due process requires “disqualification of a decisionmaker when the circumstances present ‘a risk of actual bias’ or create an appearance of bias so substantial it ‘offer[s] a possible temptation to the average [adjudicator].” *Id.* (citing *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 884-85 (2009)). According to Judge Newman, a “disqualifying conflict arises when . . . an adjudicator has acted as an accuser or prosecutor in the same matter” or when “an adjudicator has an indirect professional or institutional interest in the matter’s outcome.” Petition for Review at 18. She argues that the Judicial Council’s participation in the complaint violates these principles because the conflicts are “more severe than in any of the Supreme Court precedents,” as the Chief Circuit Judge is “the initial accuser” and the Council members have provided “eyewitness information” cited by the Chief Circuit Judge in the Rule 5 complaint. *Id.*

But unlike the cases cited by Judge Newman, the JC&D process is an administrative, not judicial, process. See *In re: Complaint of Judicial Misconduct*, C.C.D. 09-01, p. 20 (U.S. Jud.

Conf. Oct. 26, 2009). The Supreme Court has rejected the argument that the combination of investigative and adjudicative functions creates an unconstitutional risk of bias in an administrative proceeding. As the Supreme Court explained in *Withrow v. Larkin*:

The contention that the combination of investigative and adjudicative functions necessarily creates an unconstitutional risk of bias in administrative adjudication has a much more difficult burden of persuasion to carry. **It must overcome a presumption of honesty and integrity in those serving as adjudicators**; and it must convince that, under a realistic appraisal of psychological tendencies and human weakness, conferring investigative and adjudicative powers on the same individuals poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented.

421 U.S. 35, 47 (1975) (emphasis added). Additionally, “[t]he initial charge or determination of probable cause and the ultimate adjudication have different bases and purposes. The fact that the same agency makes them in tandem, and that they relate to the same issues, does not result in a procedural due process violation.” *Id.* at 58. The D.C. Circuit, in considering the *Hastings* case, reasoned that:

The fact that federal judges administer the mechanism described by the Act contributes in no small measure to this conclusion. They are called upon every day to put aside considerations not legally relevant to their decisions. A judge who can decide a case one way, notwithstanding inadmissible evidence of which he is aware indicating a different result, is not likely to prejudge a fellow judge's cause. If there is risk here, it is the risk that an empathetic decision-maker poses to the public, not a risk of bias toward the judge against whom a complaint has been lodged.

Hastings v. Jud. Conf. of U.S., 829 F.2d 91, 105 (D.C. Cir. 1987).

Judge Newman alleges that the Judicial Council has “displayed consistent bias against [her].” Petition for Review at 17. As an example, she argues that the conclusions of the three doctors who examined her were “simply rejected” as “inconvenient conclusions” by the Judicial Council. *Id.* She complains that the Judicial Council “fully credited” the conclusions of the three medical experts it retained to review the reports and conclusions of the doctors who examined Judge Newman. The Judicial Council’s conclusion that the testing undergone by Judge Newman was insufficient is not evidence of bias. The Special Committee explained, in

detail, why the testing undergone by Judge Newman was not sufficient. *See* Special Committee Report at 10-69 (July 28, 2025). Disagreement with Judge Newman’s preferred conclusion is not evidence that the Judicial Council is biased against her.

According to Judge Newman, the failure to transfer has deprived her of due process because the members of the Judicial Council “have conflicts of interest not found in any other case” because “members of the Council initiated the case internally, without a third-party complaint, and [] they personally provided the first evidence relied on in the initiating order.” Petition for Review at 15-16. When the Committee considered Judge Newman’s petition for review of her initial suspension, it noted that if the Judicial Council were to reach the ultimate issue of whether Judge Newman suffers from a disability, she might seek testimony from her colleagues on the Judicial Council if a Rule 14 hearing were held. We explained that under those circumstances, the Chief Circuit Judge and Judicial Council should give due consideration as to whether a request for transfer would be warranted. C.C.D. 23-01 at 20-21. If at a later stage in the proceedings, members of the Judicial Council will be called upon to provide testimony on the ultimate issue – whether Judge Newman suffers from a disability – then due process concerns would counsel in favor of a request to transfer the complaint.⁶ Here, where the Judicial Council is considering the narrow question of whether Judge Newman has failed to cooperate with the investigation, which does not require members of the Judicial Council to serve as witnesses or

⁶ Further consideration of the complaint by the Judicial Council, particularly on the issue of whether Judge Newman suffers from a disability that renders her unable to discharge the duties of office, could present due process concerns. Then, members of the Judicial Council might be called upon to provide testimony from their observations while serving with Judge Newman, which is more than mere knowledge of background facts or acquaintance with Judge Newman as a colleague. *See Norris v. S.E.C.*, 675 F.3d 1349, 1353-54 (Fed. Cir. 2012); Commentary to Rule 25 (acquaintance as colleagues with a subject judge is not disqualifying). Merging the roles of witness, adjudicator, and investigator could present too high a risk of an unfair tribunal.

provide testimony, the denial of the request to transfer does not amount to a denial of due process.

In closing, we note that throughout the proceedings, Judge Newman has consistently represented that she would agree to cooperate with the investigation and undergo a medical examination if the complaint were transferred to a different circuit. *See* Petition for Review, p. 15 (October 9, 2025) (“A transfer would have obviated this entire Petition, because *Judge Newman has agreed to be examined by physicians chosen by a transferee council* rather than the Council that has irreparable conflicts of interest and has shown it will disregard her examining physicians while crediting its own non-examining experts.” (emphasis added)). In that event, the Committee expects Judge Newman to honor her representation to undergo further medical evaluation.

III. Conclusion

For the above reasons, we deny Judge Newman’s petition for review and affirm the Federal Circuit Judicial Council’s order.