

IN RE DISQUALIFICATION OF RAPP.

IN RE ESTATE OF CLAIR MILLER.

[Cite as *In re Disqualification of Rapp*, 151 Ohio St.3d 1227, 2017-Ohio-7429.]

Judges—Affidavits of disqualification—R.C. 2701.03—Affiant failed to meet statutory filing deadline—Affidavit dismissed.

(No. 17-AP-053—Decided June 12, 2017.)

ON AFFIDAVIT OF DISQUALIFICATION in Logan County Court of Common Pleas,
Probate Division, Case No. 15-ES-254.

O’CONNOR, C.J.

{¶ 1} Rosanna Miller has filed an affidavit with the clerk of this court under R.C. 2701.03 seeking to disqualify Judge James Rapp, a visiting judge sitting by assignment, from presiding over any further proceedings in the above-captioned case in the Logan County Court of Common Pleas, Probate Division.

{¶ 2} Ms. Miller filed her affidavit on June 9, 2017, and she averred that the next hearing in the matter was scheduled for the next business day, June 12, 2017. Under R.C. 2701.03(B), an affidavit of disqualification must be filed “not less than seven calendar days before the day on which the next hearing in the proceeding is scheduled.” This statutory deadline may be set aside only “when compliance with the provision is impossible,” such as when the alleged bias or prejudice occurs fewer than seven days before the hearing date or the case is scheduled or assigned to a judge within seven days of the next hearing. *In re Disqualification of Leskovyansky*, 88 Ohio St.3d 1210, 723 N.E.2d 1099 (1999).

{¶ 3} Ms. Miller has failed to establish that it was impossible for her to timely file an affidavit of disqualification. She claims that on June 6, 2017, she received notice of the June 12 hearing and that she filed her affidavit as soon as

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could be expected after receiving the notice. Ms. Miller's bias allegations, however, refer to various judicial actions occurring between 2015 and a May 4, 2017 hearing. If Ms. Miller believed that Judge Rapp was biased or prejudiced against her based on this prior conduct, she should have filed an affidavit of disqualification as soon as possible after those incidents—rather than waiting until the last business day before a scheduled hearing. *See In re Disqualification of O'Grady*, 77 Ohio St.3d 1240, 1241, 674 N.E.2d 353 (1996). Because Ms. Miller has not set forth a sufficient reason for setting aside the statutory filing deadline, her affidavit is dismissed as untimely.
