

IN RE DISQUALIFICATION OF SIEVE.

GOFFSTEIN v. GOFFSTEIN.

[Cite as *In re Disqualification of Sieve*, 151 Ohio St.3d 1232, 2017-Ohio-7523.]

Judges—Affidavits of disqualification—R.C. 2701.03—Affiant failed to demonstrate bias or prejudice—Disqualification denied.

(No. 17-AP-055—Decided June 30, 2017.)

ON AFFIDAVIT OF DISQUALIFICATION in Hamilton County Court of Common
Pleas, Domestic Relations Division, Case No. DR1001501.

O’CONNOR, C.J.

{¶ 1} Kenneth Myers, counsel for Julie Goffstein, has filed an affidavit with the clerk of this court under R.C. 2701.03 seeking to disqualify Judge Jon H. Sieve from presiding over any further proceedings in a divorce and custody case in the Hamilton County Court of Common Pleas, Domestic Relations Division, and any other proceedings involving Ms. Goffstein.

{¶ 2} In May 2017, a magistrate found Ms. Goffstein in contempt of court, sentenced her to 60 days in jail, and ordered her to pay a \$500 fine. The magistrate’s decision indicated that she may purge herself of the contempt by paying previously awarded attorney fees to her ex-husband and by “making a \$500 contribution to the fathers’ rights organization of her choice.” Judge Sieve provisionally adopted the magistrate’s decision, pending any objections pursuant to Civ.R. 53. Ms. Goffstein timely filed objections, arguing that the magistrate’s decision was legally improper and demonstrated the magistrate’s bias against her.

{¶ 3} In his affidavit of disqualification, Mr. Myers avers that Judge Sieve should be removed from the underlying case because he provisionally adopted the

“blatantly biased” magistrate’s decision and therefore “pre-judge[d]” Ms. Goffstein’s pending objections.

{¶ 4} Judge Sieve has responded in writing to the affidavit, denying any bias against Ms. Goffstein. According to the judge, the appropriate remedy for her disagreement with the magistrate’s decision is written objections under Civ.R. 53, rather than an affidavit of disqualification.

{¶ 5} Numerous state ethics committees have advised that absent statutory authority, a judge may not require a contribution to a charity as part of a sentence or a monetary sanction. *See, e.g., Gray, Charitable Contributions as Part of Sentences*, Judicial Conduct Reporter (Fall 2016) (surveying various state advisory opinions on this issue); Ohio Board of Professional Conduct Advisory Opinion 2010-4 (June 11, 2010) (concluding that a judge’s granting of an offender’s request to fulfill a sanction of community service with a charitable contribution raises numerous ethical concerns); Hawaii Commission on Judicial Conduct Advisory Opinion 2001-01 (June 28, 2001) (addressing the ethical issues resulting from ordering a litigant to pay a monetary fine for civil contempt to a charitable organization). Here, the magistrate’s requiring Ms. Goffstein to make a financial contribution in order to purge her contempt raises these same ethical concerns. Further, the particular type of contribution ordered here appears to raise additional concerns about the magistrate’s impartiality or the appearance of bias: the magistrate directed Ms. Goffstein to donate to a fathers’ rights organization, which could be perceived as having an interest adverse to her in the underlying custody case.

{¶ 6} Judge Sieve is correct, however, that an affidavit of disqualification is not the appropriate forum to determine whether a *magistrate’s* decision is lawful or in compliance with the Code of Judicial Conduct. *See In re Disqualification of Celebrezze*, 135 Ohio St.3d 1218, 2012-Ohio-6304, 985 N.E.2d 499, ¶ 8; *In re Disqualification of Burge*, 142 Ohio St.3d 57, 2014-Ohio-5871, 28 N.E.3d 48, ¶ 4.

The issue here is narrow and limited to determining whether a judge in a pending case has a bias, prejudice, or other disqualifying interest that mandates the judge's removal. *Burge* at ¶ 4. Mr. Myers's only bias allegation against Judge Sieve is that he provisionally adopted the magistrate's decision before the filing of Ms. Goffstein's objections. The civil rules, however, contemplate such judicial action. Specifically, Civ.R. 53(D)(4)(e)(i) provides that a judge may enter judgment on a magistrate's decision "either during the fourteen days permitted * * * for the filing of objections to a magistrate's decision or after the fourteen days have expired." If the court enters judgment during the 14 days, the timely filing of objections operates as an automatic stay of execution of the judgment until the court disposes of the objections. *Id.* And in ruling on the objections, the court "shall undertake an independent review as to the objected matters." *See* Civ.R. 53(D)(4)(d).

{¶ 7} As noted, Ms. Goffstein's objections to the magistrate's decision remain pending before Judge Sieve. "A judge is presumed to follow the law and not to be biased, and the appearance of bias or prejudice must be compelling to overcome these presumptions." *In re Disqualification of George*, 100 Ohio St.3d 1241, 2003-Ohio-5489, 798 N.E.2d 23, ¶ 5. Without more, it must be assumed that Judge Sieve will fairly and impartially rule on those objections and undertake the "independent review" required by Civ.R. 53. If Ms. Goffstein disagrees with the judge's ultimate decision, she may have other remedies. But her present dissatisfaction with his provisional adoption of the magistrate's decision—before the judge has ruled on the pending objections—cannot be grounds for disqualification. *See In re Disqualification of Suster*, 127 Ohio St.3d 1240, 2009-Ohio-7202, 937 N.E.2d 1026, ¶ 16 ("Adverse rulings alone do not show that a judge is biased").

{¶ 8} For these reasons, the affidavit of disqualification is denied. The case may proceed before Judge Sieve.