

[Cite as *In re Disqualification of Lynch*, 157 Ohio St.3d 1209, 2019-Ohio-3837.]

IN RE DISQUALIFICATION OF LYNCH.

THE STATE OF OHIO v. DECARO.

**[Cite as *In re Disqualification of Lynch*, 157 Ohio St.3d 1209,
2019-Ohio-3837.]**

*Judges—Affidavits of disqualification—R.C. 2701.03 and 2501.13—Affiant failed
to demonstrate bias or prejudice—Disqualification denied.*

(No. 19-AP-043—Decided June 7, 2019.)

ON AFFIDAVIT OF DISQUALIFICATION in Eleventh District Court of Appeals Case
No. 2018-G-0175.

O’CONNOR, C.J.

{¶ 1} Dennis M. Coyne, counsel for the state, has filed an affidavit with the clerk of this court pursuant to R.C. 2701.03 and 2501.13 seeking to disqualify Judge Matt Lynch from serving on the three-judge panel in the above-referenced appeal.

{¶ 2} The allegations in the affidavit stem from a judicial-election complaint that Judge Lynch filed against Mr. Coyne in 2011. At the time, Judge Lynch was a Bainbridge Township trustee who was running for a seat on the Chardon Municipal Court. Judge Lynch and Mr. Coyne were opponents in the May 2011 primary election. Shortly before the election, Judge Lynch filed a complaint with the Ohio Elections Commission alleging that Mr. Coyne had distributed campaign materials containing false statements. *See* R.C. 3517.21(B)(8). The commission found probable cause to proceed to a full hearing, which was set for June 2011. Thereafter, the commission continued the hearing on two separate occasions. The commission, however, failed to set another date for the hearing, and the case sat idle for several years, until the commission dismissed the complaint on August 23, 2018.

{¶ 3} Mr. Coyne alleges that Judge Lynch’s refusal to dismiss the election complaint for over seven years demonstrates that he is biased and should be removed from the panel that will hear the above-captioned appeal. Mr. Coyne maintains that Judge Lynch had nothing to gain by refusing to dismiss the complaint after he won the primary election. Mr. Coyne also contends that Judge Lynch refused to dismiss the case even after a federal district court had enjoined the commission from prosecuting the complaint. As Mr. Coyne sees it, the judge’s refusal to follow the federal court’s ruling is grounds for disqualification from any matter involving him.

{¶ 4} Judge Lynch has responded to the allegations in the affidavit and denies any bias against Mr. Coyne. The judge concedes that he declined to withdraw the election complaint against Mr. Coyne but denies that this was the result of any animosity or bias against him. The judge explains that once he received information suggesting that Mr. Coyne may have committed a campaign violation, he had an ethical duty as both a judicial candidate and a lawyer to file the complaint. And once the commission found probable cause that a violation had occurred, the judge did not believe that it would be appropriate to withdraw the complaint absent some information that called the facts or the law into question. Judge Lynch also maintains that Mr. Coyne is wrong that the commission was enjoined from prosecuting the complaint. In the end, Judge Lynch claims that he harbors no personal animosity or bias against Mr. Coyne and is able to be fair and impartial in any case in which he appears as counsel.

{¶ 5} For the reasons that follow, the affidavit of disqualification is denied.

{¶ 6} First, the mere fact that a judge, before his election, was involved in unrelated litigation involving a party or counsel is not a sufficient basis for the judge’s disqualification. *In re Disqualification of Lucci*, 117 Ohio St.3d 1242, 2006-Ohio-7230, 884 N.E.2d 1093, ¶ 9; *In re Disqualification of Serrott*, 134 Ohio St.3d 1245, 2012-Ohio-6340, 984 N.E.2d 14, ¶ 6. Likewise, a judge’s filing of a

complaint alleging unethical or unlawful conduct against an attorney appearing before the judge does not automatically require the judge's disqualification. *See In re Disqualification of Lynch*, 135 Ohio St.3d 1277, 2013-Ohio-910, 986 N.E.2d 1000, ¶ 5; *In re Disqualification of Maloney*, 88 Ohio St.3d 1215, 1215-1216, 723 N.E.2d 1102 (1999).

{¶ 7} Second, contrary to Mr. Coyne's claim, Judge Lynch did not ignore federal law when he refused to withdraw the election complaint. A federal district court did issue a decision in 2014 that found R.C. 3517.21(B)(9) and (10) unconstitutional and enjoined the commission from prosecuting complaints brought under those provisions. *List v. Ohio Elections Comm.*, 45 F.Supp.3d 765, 781 (S.D. Ohio 2014), *aff'd sub nom. Susan B. Anthony List v. Driehaus*, 814 F.3d 466 (6th Cir.2016). But Judge Lynch filed his election complaint under R.C. 3517.21(B)(8), which was not under consideration in *List*.

{¶ 8} Third, Mr. Coyne faults Judge Lynch for refusing to withdraw the complaint after the judge won the election and thus had nothing to gain by refusing to withdraw it. Mr. Coyne, however, points to no legal authority for the proposition that an election complaint is rendered moot and must be withdrawn once the election is over. Moreover, Judge Lynch has offered a reasonable explanation for refusing to withdraw the complaint—namely, that the commission had found probable cause to proceed on the complaint and withdrawing it at that point was not warranted absent some reason to question the legal or factual basis for the complaint. Based on Judge Lynch's response, no reasonable and objective observer would question his impartiality based on his refusal to withdraw the election complaint.

{¶ 9} In the end, nothing in the record suggests that Judge Lynch's refusal to withdraw his complaint is due to bias or prejudice against Mr. Coyne. "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*

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Disqualification of George, 100 Ohio St.3d 1241, 2003-Ohio-5489, 798 N.E.2d 23,

¶ 5. Those presumptions have not been overcome in this case.

{¶ 10} Therefore, the affidavit of disqualification is denied. The appeal may proceed with Judge Lynch on the three-judge panel.
