

IN RE DISQUALIFICATION OF O'DONNELL.

THE STATE OF OHIO v. RODRIGUEZ.

**[Cite as *In re Disqualification of O'Donnell*, 157 Ohio St.3d 1211,
2019-Ohio-3839.]**

Judges—Affidavits of disqualification—R.C. 2701.03—Defendant's motion to dismiss, on which hearing was scheduled at which judge would be called as witness, was withdrawn—Disqualification denied.

(No. 19-AP-076—Decided June 25, 2019.)

ON AFFIDAVIT OF DISQUALIFICATION in Cuyahoga County Court of Common
Pleas Case No. CR-18-629860-A.

O'CONNOR, C.J.

{¶ 1} Assistant Prosecuting Attorney Kristen L. Sobieski has filed an affidavit with the clerk of this court pursuant to R.C. 2701.03 seeking to disqualify Judge John P. O'Donnell from presiding over any further proceedings in the above-referenced case.

{¶ 2} According to Ms. Sobieski's affidavit, in May 2019, the defendant filed a motion to dismiss the indictment due to alleged discrimination in the selection of Cuyahoga County grand-jury forepersons. Judge O'Donnell scheduled a hearing on the defendant's motion for June 26, 2019. The state thereafter subpoenaed Judge O'Donnell and other Cuyahoga County judges to testify at the hearing regarding their processes for appointing grand-jury forepersons. Ms. Sobieski avers that the state intends to call Judge O'Donnell as a witness at the June 26 hearing to rebut the claims raised by the defendant in his motion to dismiss.

{¶ 3} Judge O'Donnell has responded to the affidavit and requests that it be denied. The judge states that after Ms. Sobieski filed her affidavit, the defendant

withdrew his motion to dismiss. The judge therefore believes that the affidavit of disqualification is moot.

{¶ 4} Jud.Cond.R. 2.11(A)(2)(d) requires a judge's disqualification if the judge is "[l]ikely to be a material witness in the proceeding." As previously explained, "[e]very litigant is entitled to have his or her case decided by a judge who can approach the case in an objective and impartial manner, and a judge who possesses personal knowledge of evidentiary facts that are in dispute may not be able to meet this criterion." *In re Disqualification of Matia*, 135 Ohio St.3d 1246, 2012-Ohio-6343, 986 N.E.2d 8, ¶ 11. Here, Ms. Sobieski requested Judge O'Donnell's disqualification because the state intended to call the judge as a witness to rebut the claims raised in the defendant's motion to dismiss. But according to Judge O'Donnell, the defendant has since withdrawn his motion to dismiss.

{¶ 5} Based on this record, there is no indication that Judge O'Donnell likely will be a witness in the underlying case, and Ms. Sobieski has not identified any other reason to question his impartiality. If Ms. Sobieski believes that despite the developments in the case since she filed her affidavit, Judge O'Donnell's removal remains necessary, she may file another affidavit of disqualification, citing specific facts to support her allegation.

{¶ 6} The affidavit of disqualification is denied. The case may proceed before Judge O'Donnell.
