

IN RE DISQUALIFICATION OF POKORNY.

THE STATE OF OHIO v. UNTIED.

**[Cite as *In re Disqualification of Pokorny*, 157 Ohio St.3d 1226,
2019-Ohio-4433.]**

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

(No. 19-AP-080—Decided July 3, 2019.)

ON AFFIDAVIT OF DISQUALIFICATION in Medina County Court of Common Pleas
Case No. 17 CR 1132.

O’CONNOR, C.J.

{¶ 1} Defendant David M. Untied has filed an affidavit with the clerk of this court pursuant to R.C. 2701.03 seeking to disqualify Judge Thomas Pokorny, a retired judge sitting by assignment, from presiding over any further proceedings in the above-referenced case, now pending for trial.

{¶ 2} Mr. Untied claims that Judge Pokorny was not properly assigned to the case and that the judge displayed bias against him at a May 3, 2019 pretrial hearing.

{¶ 3} For the reasons explained below, no basis has been established to order the disqualification of Judge Pokorny.

{¶ 4} First, Judge Pokorny was assigned to preside over the case pursuant to certificate of assignment No. 19JA0778, effective April 9, 2019. The certificate was required to be filed in the underlying case. *See* Supreme Court of Ohio, Guidelines for Assignment of Judges, Section 5.1(A) (requiring the administrative judge to direct that the certificate of assignment be filed with the clerk of the court to which the assigned judge has been assigned and included as part of the record in

the case). Mr. Untied claims that the certificate has not yet been filed with the Medina County Clerk of Courts, but he has failed to articulate why that fact would now require Judge Pokorny's disqualification for bias pursuant to R.C. 2701.03.

{¶ 5} Second, Mr. Untied has failed to establish that Judge Pokorny's conduct at the May 3 pretrial hearing requires his removal. Mr. Untied claims that the judge displayed bias in a variety of ways, including that he failed to first address Mr. Untied's motion to disqualify the prosecutor's office, denied Mr. Untied's motion to order the prosecution to identify an alleged witness to support a potential defense claim under *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), permitted the prosecutors to make misrepresentations about the case, and conducted the hearing without first becoming familiar with the relevant facts. An affidavit of disqualification, however, "addresses the narrow issue of the possible bias of a judge and " 'is not a vehicle to contest matters of substantive or procedural law.' " *In re Disqualification of McGrath*, 149 Ohio St.3d 1224, 2016-Ohio-8601, 74 N.E.3d 453, ¶ 2, quoting *In re Disqualification of Solovan*, 100 Ohio St.3d 1214, 2003-Ohio-5484, 798 N.E.2d 3, ¶ 4. "The term 'bias or prejudice' 'implies a hostile feeling or spirit of ill-will or undue friendship or favoritism toward one of the litigants or his attorney, with the formation of a fixed anticipatory judgment on the part of the judge, as contradistinguished from an open state of mind which will be governed by the law and the facts.' " *In re Disqualification of O'Neill*, 100 Ohio St.3d 1232, 2002-Ohio-7479, 798 N.E.2d 17, ¶ 14, quoting *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 469, 132 N.E.2d 191 (1956).

{¶ 6} Based on this record, Mr. Untied has not established that Judge Pokorny has animosity toward him or a fixed anticipatory judgment on any issue in the case. In deciding an affidavit of disqualification, it is not the role of the chief justice to second-guess a judge's trial decisions, and "[a]dverse rulings, without more, are not evidence that a judge is biased or prejudiced." *In re Disqualification of Russo*, 110 Ohio St.3d 1208, 2005-Ohio-7146, 850 N.E.2d 713, ¶ 5.

{¶ 7} The affidavit of disqualification is denied. The case may proceed before Judge Pokorny.
