

IN RE DISQUALIFICATION OF FINNEGAN.

MESSENGER v. MARION COUNTY PROSECUTOR’S OFFICE.

**[Cite as *In re Disqualification of Finnegan*, 157 Ohio St.3d 1258,
2019-Ohio-4533.]**

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

(Nos. 19-AP-087 and 19-AP-088—Decided July 18, 2019.)

ON AFFIDAVITS OF DISQUALIFICATION in Marion County Court of Common Pleas
Case Nos. 2018 CV 0581 and 2018 CV 0142.

O’CONNOR, C.J.

{¶ 1} Plaintiff Chad A. Messenger has filed two affidavits with the clerk of this court pursuant to R.C. 2701.03 seeking to disqualify Judge William Finnegan, a retired judge sitting by assignment, from presiding over any further proceedings in the above-referenced civil cases.

{¶ 2} Mr. Messenger claims that Judge Finnegan presided over the criminal case that is related to the two underlying civil cases and that the judge is familiar with some of the evidence that Mr. Messenger will be challenging in the civil cases. Because of the judge’s familiarity with that evidence, Mr. Messenger suggests that Judge Finnegan may not have an open mind in the civil cases.

{¶ 3} In general,

“a judge’s participation in the trial of a prior cause, during which the judge acquired knowledge of the facts of the underlying case, does not require disqualification.” *In re Disqualification of Krichbaum*, 81 Ohio St.3d 1205, 1206, 688 N.E.2d 511 (1997). * * * In other

words, because “ ‘evidence presented in the trial of a prior cause * * * do[es] not stem from an extrajudicial source,’ it creates no personal bias requiring recusal.” [*State v. D’Ambrosio*, 67 Ohio St.3d 185, 188, 616 N.E.2d 909 (1993)], quoting *State v. Smith*, 242 N.W.2d 320, 324 (Iowa 1976).

(Second ellipsis sic.) *In re Disqualification of Basinger*, 135 Ohio St.3d 1293, 2013-Ohio-1613, 987 N.E.2d 687, ¶ 5.

{¶ 4} The mere fact that Judge Finnegan presided over the related criminal trial is insufficient to mandate his disqualification. “Just as ‘[a] judge is presumed to follow the law and not to be biased,’ a judge is presumed to be capable of separating what may properly be considered from what may not be considered.” *Id.*, quoting *In re Disqualification of George*, 100 Ohio St.3d 1241, 2003-Ohio-5489, 798 N.E.2d 23, ¶ 5. Here, nothing in the record suggests that Judge Finnegan has been unduly influenced by the criminal case or that the judge will be unable to fairly and impartially consider the evidence set forth in the underlying civil cases.

{¶ 5} Mr. Messenger also claims that because Judge Finnegan presided over the related criminal case, the judge may have knowledge of disputed facts in the civil matters. Mr. Messenger, however, has not sufficiently explained this argument. “[V]ague, unsubstantiated allegations [in an] affidavit are insufficient on their face for a finding of bias or prejudice.” *In re Disqualification of Walker*, 36 Ohio St.3d 606, 522 N.E.2d 460 (1988). If Judge Finnegan ultimately concludes that he has personal knowledge of facts that are in dispute in the civil cases, he must disqualify himself, as Jud.Cond.R. 2.11(A)(1) directs. But Mr. Messenger’s suppositions alone are insufficient to require the judge’s removal. *See In re Disqualification of Matia*, 135 Ohio St.3d 1246, 2012-Ohio-6343, 986 N.E.2d 8, ¶ 9, quoting *In re Disqualification of Gorman*, 74 Ohio St.3d 1251, 657 N.E.2d

1354 (1993) (a judge will not be disqualified “ ‘based solely on suppositions that the judge may be called as a witness’ ”).

{¶ 6} The affidavits of disqualification are denied. The cases may proceed before Judge Finnegan.
