

**IN RE DISQUALIFICATION OF RAPP.**

**LANE v. FRENCH.**

**FRENCH v. MILLER.**

**IN RE ESTATE OF MILLER.**

[Cite as *In re Disqualification of Rapp*, 157 Ohio St.3d 1248, 2019-Ohio-4812.]

*Judges—Affidavits of disqualification—R.C. 2701.03—Affiant failed to comply with statutory requirements—Disqualification denied.*

(No. 19-AP-099—Decided August 22, 2019.)

ON AFFIDAVIT OF DISQUALIFICATION in Logan County Court of Common Pleas  
Case Nos. CV 18 08 0202 and CV 17 06 0170 and Logan County Court of  
Common Pleas, Probate Division, Case No. 15 ES 0254.

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**O’CONNOR, C.J.**

{¶ 1} James Ray Miller has filed an affidavit pursuant to R.C. 2701.03 seeking to disqualify Judge James Rapp, a retired judge sitting by assignment, from the above-referenced cases.

{¶ 2} Mr. Miller alleges that various individuals—including his siblings and the administrator of his father’s estate—have engaged in misconduct and that Judge Rapp has either ignored his judicial duties in permitting that misconduct or issued rulings authorizing the misconduct.

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

{¶ 4} First, R.C. 2701.03(B)(4) requires that an affidavit of disqualification include “[t]he date of the next scheduled hearing in the proceeding or, if there is no hearing scheduled, a statement that there is no hearing scheduled.” Mr. Miller’s affidavit indicates that he swore to the allegations on August 16, 2019. However,

he attached a certificate of service to the affidavit indicating that he served the affidavit on the judge and other parties on August 20, 2019. The unsworn certificate of service also states that the “most recent hearing in any of the captioned matters was held on August 20, 2019” and that the date of the next hearing is “unknown.” It appears, therefore, that Mr. Miller attempted to identify the date of the next scheduled hearing in his unsworn certificate of service, rather than in his affidavit.

{¶ 5} It is well-established that “[i]n deciding a disqualification request, the chief justice cannot consider unsworn allegations by a litigant.” *In re Disqualification of Stucki*, 156 Ohio St.3d 1236, 2019-Ohio-1624, 125 N.E.3d 963, ¶ 5; *In re Disqualification of O’Leary*, 156 Ohio St.3d 1280, 2019-Ohio-1729, 128 N.E.3d 248, ¶ 4-5 (the chief justice cannot consider an unsworn document indicating that there were no new hearings scheduled in the case); *In re Disqualification of Daugherty*, 145 Ohio St.3d 1208, 2015-Ohio-5668, 47 N.E.3d 859, ¶ 3 (an “unsworn document cannot cure [an affiant’s] mistake” regarding the date of the next scheduled hearing). Mr. Miller therefore has not properly identified the date of the next scheduled hearing, as required by R.C. 2701.03(B)(4). Further, Mr. Miller submitted a 38-page affidavit. S.Ct.Prac.R. 21.01(D)(3) provides that “[a]n affidavit of disqualification shall not exceed fifteen numbered pages, exclusive of the certificate of service and any exhibits.” Mr. Miller failed to request leave to exceed the page limitation, and he failed to otherwise explain why it was necessary for him to exceed the limitation.

{¶ 6} Second, even if Mr. Miller had complied with the filing requirements in R.C. 2701.03, he failed to set forth adequate grounds for Judge Rapp’s disqualification. An affidavit of disqualification “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. It is outside the scope of this proceeding to determine whether the various individuals identified in Mr. Miller's affidavit engaged in the alleged misconduct or whether Judge Rapp ignored his judicial duties in allowing such behavior. Mr. Miller may have other avenues to raise those arguments or to challenge Judge Rapp's judicial rulings. But the issues identified in Mr. Miller's affidavit cannot be litigated in a disqualification request.

{¶ 7} The affidavit of disqualification is denied. The cases may proceed before Judge Rapp.

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