

IN RE DISQUALIFICATION OF O'DONNELL.

HUNTINGTON NATIONAL BANK v. LONG.

**[Cite as *In re Disqualification of O'Donnell*, 157 Ohio St.3d 1247,
2019-Ohio-4813.]**

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

(No. 19-AP-084—Decided August 16, 2019.)

ON AFFIDAVIT OF DISQUALIFICATION in Franklin County Court of Common Pleas,
General Division, Case No. 17CV000416.

O'CONNOR, C.J.

{¶ 1} Defendant Terri L. Long has filed an affidavit with the clerk of this court pursuant to R.C. 2701.03 seeking to disqualify Judge Colleen O'Donnell from presiding over any further proceedings in the above-referenced case. This is Ms. Long's second attempt to remove Judge O'Donnell in this matter. Ms. Long's first affidavit of disqualification was dismissed on July 3, 2019, because she failed to identify any matter currently pending before the trial court; in fact, Ms. Long admitted that the underlying "case is closed." Supreme Court case No. 19-AP-081; *see In re Disqualification of Hayes*, 135 Ohio St.3d 1221, 2012-Ohio-6306, 985 N.E.2d 501, ¶ 6 ("the chief justice cannot rule on an affidavit of disqualification when * * * nothing is pending before the trial court").

{¶ 2} Ms. Long thereafter submitted this second disqualification request, which indicated on the cover page that a motion had been filed on July 2, 2019—after Ms. Long had submitted her first affidavit of disqualification. But as noted in Judge O'Donnell's response to Ms. Long's second filing, Ms. Long's second affidavit of disqualification appears to be identical to her first affidavit of

disqualification. Indeed, in the present matter, Ms. Long simply refiled the same affidavit, which she executed on June 27, 2019, but also included an unsworn cover page indicating “motion filed July 2, 2019.”

{¶ 3} 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); *In re Disqualification of Fleegle*, 151 Ohio St.3d 1228, 2017-Ohio-8041, 88 N.E.3d 960, ¶ 3 (an affiant “cannot raise new facts in an unsworn motion for reconsideration”); *In re Disqualification of Fuerst*, 134 Ohio St.3d 1267, 2012-Ohio-6344, 984 N.E.2d 1079, ¶ 19 (allegations raised in an unsworn letter cannot be considered as part of an affidavit of disqualification). Accordingly, Ms. Long has not properly demonstrated that any matters are pending before the trial court, and her second disqualification request is dismissed for the same reasons identified in the entry dismissing her first affidavit of disqualification.

{¶ 4} Alternatively, even if Ms. Long had properly sworn to the new allegation on the cover page of her second filing, Judge O’Donnell states that she has since ruled on the July 2, 2019 motion and that the underlying case is pending in the court of appeals. Because Ms. Long has again failed to identify any matter currently pending before the judge she seeks to disqualify, there is no basis to order disqualification under R.C. 2701.03. *See In re Disqualification of Horton*, 137 Ohio St.3d 1236, 2013-Ohio-5761, 1 N.E.3d 413 (denying an affidavit of disqualification against a trial-court judge when the case was pending in the court of appeals); *In re Disqualification of Selvaggio*, 156 Ohio St.3d 1301, 2019-Ohio-

1826, 128 N.E.3d 264, ¶ 4 (“The chief justice will not decide an affidavit of disqualification based merely on the possibility of a remand from the court of appeals”).

{¶ 5} The affidavit of disqualification is dismissed.
