

IN RE DISQUALIFICATION OF WEITHMAN.

THE STATE OF OHIO v. DILLEHAY.

**[Cite as *In re Disqualification of Weithman*, 157 Ohio St.3d 1261,
2019-Ohio-4814.]**

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

(No. 19-AP-096—Decided August 22, 2019.)

ON AFFIDAVIT OF DISQUALIFICATION in Champaign County Municipal Court Case
No. 19CRB00435.

O’CONNOR, C.J.

{¶ 1} Andrew Pratt, counsel for the defendant, has filed an affidavit pursuant to R.C. 2701.03 and 2701.031 seeking to disqualify Judge Gil S. Weithman from presiding over any further proceedings in the above-referenced case, now pending for trial.

{¶ 2} Mr. Pratt alleges that at a recent hearing, Judge Weithman made comments indicating that he has prejudged the merits of a domestic-violence charge against the defendant. Specifically, Mr. Pratt claims that the judge stated that he would not accept the parties’ proposed plea agreement—in which the prosecutor agreed to dismiss the domestic-violence charge—because the defendant was guilty of that charge based on the judge’s independent review of the police report and witness statements. Mr. Pratt does not believe that his client will receive a fair and impartial trial in front of Judge Weithman.

{¶ 3} Judge Weithman has filed a response to the affidavit and denies making any comments indicating that he has already determined the merits of the domestic-violence charge. The judge states that at the recent hearing, he merely set

forth his reasons for rejecting the parties’ plea agreement, which were not a reflection on the merits of the case. The judge further states that he has reviewed only the police officer’s statement, which was attached to the file, and purposely has refrained from reviewing any additional materials “so as to remain neutral for the presentation of evidence * * * at Trial.”

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

{¶ 5} First, “a judge’s decision regarding whether to accept a plea bargain * * * is within his or her discretion and, in general, is not evidence of bias or prejudice.” *In re Disqualification of Adkins*, 155 Ohio St.3d 1308, 2018-Ohio-5438, 122 N.E.3d 193, ¶ 11; accord *In re Disqualification of Mitrovich*, 74 Ohio St.3d 1219, 1220, 657 N.E.2d 1333 (1990) (“Whether the refusal to accept the plea bargain constitutes an abuse of discretion * * * is not grounds to sustain an affidavit of disqualification”).

{¶ 6} Second, the audio transcript of the recent hearing does not support Mr. Pratt’s allegation that the judge has predetermined the defendant’s guilt on the domestic-violence charge. The judge was attempting to explain his reasons for rejecting the proposed plea agreement, and those isolated comments are insufficient to demonstrate that he has a fixed anticipatory judgment on any issue in the underlying case. See *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) (defining “bias or prejudice” as implying “ ‘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’ ”).

{¶ 7} As previously explained,

[a] judge rarely hears preliminary aspects of a case without forming conditional opinions of the facts or law. These conditional opinions often assist the parties and their counsel in identifying and narrowing the issues in controversy and facilitate the settlement of cases prior to trial. However, the formation of these conditional opinions is not sufficient to counter the presumption of the judge's ability to render a fair decision based upon the evidence later presented at trial.

In re Disqualification of Brown, 74 Ohio St.3d 1250, 1251, 657 N.E.2d 1353 (1993).

{¶ 8} Here, Judge Weithman has noted that he will remain neutral for the presentation of evidence at trial. “The statutory right to seek disqualification of a judge is an extraordinary remedy. A judge is presumed to follow the law and not to be biased, and the appearance of bias or prejudice must be compelling to overcome these presumptions.” (Citation omitted.) *In re Disqualification of George*, 100 Ohio St.3d 1241, 2003-Ohio-5489, 798 N.E.2d 23, ¶ 5. Those presumptions have not been overcome in this case.

{¶ 9} The affidavit of disqualification is denied. Trial may proceed before Judge Weithman.
