

IN RE DISQUALIFICATION OF KELBLEY.

THE STATE OF OHIO v. PERKINS.

**[Cite as *In re Disqualification of Kelbley*, 157 Ohio St.3d 1270,
2019-Ohio-5450.]**

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

(No. 19-AP-101—Decided September 23, 2019.)

ON AFFIDAVIT OF DISQUALIFICATION in Seneca County Court of Common Pleas,
General and Domestic Relations Division, Case Nos. 08 CR 0158 and
08 CR 0208.

O’CONNOR, C.J.

{¶ 1} Defendant William H. Perkins Jr. has filed an affidavit pursuant to R.C. 2701.03 seeking to disqualify Judge Michael P. Kelbley from presiding over any further proceedings in the above-referenced cases.¹

{¶ 2} Mr. Perkins avers that in his recently filed motion for a new trial, he argues that two former police detectives falsified evidence to obtain convictions against him. According to Mr. Perkins, the detectives were convicted of tampering with evidence in other criminal matters, and Mr. Perkins believes that they engaged in similar misconduct in his cases. Mr. Perkins avers that Judge Kelbley was “personally involved in the tampering problems in Seneca County” and that the judge cannot fairly decide the pending motion, because “he would be apt to protect the convictions from his courtroom which are based on the tampered evidence

1. In his affidavit, Mr. Perkins also requests disqualification of Seneca County Prosecuting Attorney Derek W. DeVine. R.C. 2701.03, however, authorizes the chief justice to remove only a judge from a pending case.

provided by both former detectives.” Mr. Perkins also alleges that Judge Kelbley will be called as a witness.

{¶ 3} Judge Kelbley filed a response opposing the disqualification request. The judge expressly denies involvement in the evidence-tampering problems in Seneca County. The judge acknowledges that one of the convicted detectives briefly testified at Mr. Perkins’s trials, but the judge further notes that Mr. Perkins committed his crimes well before the criminal charges were filed against the two detectives.

{¶ 4} “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. An appearance of impropriety exists if “a reasonable and objective observer would harbor serious doubts about the judge’s impartiality.” *In re Disqualification of Lewis*, 117 Ohio St.3d 1227, 2004-Ohio-7359, 884 N.E.2d 1082, ¶ 8. Based on the slim record here, an objective observer would have no reason to question Judge Kelbley’s impartiality merely because one of the witnesses at Mr. Perkins’s trial was later convicted of tampering with evidence in other matters. Mr. Perkins has not alleged that Judge Kelbley has any disqualifying relationship with the former detectives that would require the judge’s removal. Therefore, the presumption that Judge Kelbley will be fair and impartial has not been overcome.

{¶ 5} In addition, a judge will not be disqualified “ ‘based solely on suppositions that the judge may be called as a witness.’ ” *In re Disqualification of Stuard*, 113 Ohio St.3d 1236, 2006-Ohio-7233, 863 N.E.2d 636, ¶ 6, quoting *In re Disqualification of Gorman*, 74 Ohio St.3d 1251, 657 N.E.2d 1354 (1993). If Judge Kelbley later determines that a hearing is necessary and he is likely to be a material witness, the judge must disqualify himself, as Jud.Cond.R. 2.11(A)(2)(d) directs.

However, Mr. Perkins's affidavit does not establish that Judge Kelbley possesses evidence that is necessary for resolution of the pending motion or unobtainable from other witnesses. *See In re Disqualification of Matia*, 135 Ohio St.3d 1246, 2012-Ohio-6343, 986 N.E.2d 8, ¶ 11.

{¶ 6} The affidavit of disqualification is denied. The cases may proceed before Judge Kelbley.
