

IN RE DISQUALIFICATION OF SCHWEIKERT.

IN RE CASES RELATING TO ABUBAKAR ATIQ DURRANI.

[Cite as *In re Disqualification of Schweikert*, 158 Ohio St.3d 1201,  
2019-Ohio-5451.]

*Judges—Affidavits of disqualification—R.C. 2701.03—Affiant failed to include any specific allegations or supporting facts in his affidavit and to identify any matter now pending in trial court—Disqualification denied.*

(No. 19-AP-117—Decided September 26, 2019.)

ON AFFIDAVIT OF DISQUALIFICATION in Hamilton County Court of Common Pleas  
Case Nos. A1706463 et al.

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O’CONNOR, C.J.

{¶ 1} Eric Deters has filed an affidavit pursuant to R.C. 2701.03 seeking to disqualify Judge Mark R. Schweikert, a retired judge sitting by assignment, from hearing any contempt motions or making any rulings involving Mr. Deters.

{¶ 2} For the following reasons, no basis has been established to order the disqualification of Judge Schweikert.

{¶ 3} First, Mr. Deters avers that Judge Schweikert is biased against him based on the contents of voluminous exhibits attached to Mr. Deters’s affidavit. The first exhibit—which appears to be the primary basis for the disqualification request—includes an unsigned, unsworn document listing various grievances against Judge Schweikert. As previously explained to Mr. Deters, R.C. 2701.03(B)(1) requires that an affidavit of disqualification include “the specific allegations on which the claim of interest, bias, prejudice, or disqualification is based and the facts to support each of those allegations.” Mr. Deters failed to include any specific allegations or facts *in his affidavit of disqualification*. Instead,

he attached a document listing numerous factual allegations from an unknown source. “In 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. Mr. Deters has failed to comply with the requirements of R.C. 2701.03(B)(1).

{¶ 4} Second, R.C. 2701.03(A) authorizes a party or a party’s attorney to file an affidavit of disqualification. Because Mr. Deters is neither a party nor an attorney in the underlying medical-malpractice cases, he lacks authority to seek Judge Schweikert’s removal in those actions. Mr. Deters may, however, seek disqualification in the contempt action against him. However, it appears that there is nothing pending in that proceeding. According to the exhibits attached to Mr. Deters’s affidavit, Judge Schweikert found Mr. Deters in contempt of court and Mr. Deters appealed that decision. Mr. Deters has not identified any matter now pending in the trial court. The chief justice’s statutory authority to disqualify judges extends only to those matters in which “a proceeding [is] pending before the court.” R.C. 2701.03(A). The chief justice will not decide a disqualification request when the underlying case is pending on appeal. *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 underlying 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} Third, even if the contempt proceeding remains pending before Judge Schweikert, it would not be appropriate to decide Mr. Deters’s affidavit of disqualification at this time. Based on the exhibits attached to his affidavit, it appears that Mr. Deters believes that Judge Schweikert demonstrated bias by committing various legal errors during the contempt proceedings. For example,

Mr. Deters believes that Judge Schweikert misrepresented the facts, failed to give proper notice of the contempt hearing, misinterpreted the “gag order” that Mr. Deters had allegedly violated, and prevented Mr. Deters from calling witnesses in his defense. Those legal issues, however, should be decided in Mr. Deters’s pending appeal—not in an affidavit of disqualification. *See 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 (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’ ”).

{¶ 6} The affidavit of disqualification is denied.

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