

IN RE DISQUALIFICATION OF CORNACHIO.

THE STATE OF OHIO v. BRANTWEINER,

THE STATE OF OHIO v. BECHTEL,

AND

IN RE 36370 VINE STREET.

**[Cite as *In re Disqualification of Cornachio*, 158 Ohio St.3d 1222,
2019-Ohio-5486.]**

*Judges—Affidavits of disqualification—R.C. 2701.03 and 2701.031—Affiant failed
to meet statutory filing deadline—Affidavit dismissed.*

(No. 19-AP-127—Decided October 28, 2019.)

ON AFFIDAVIT OF DISQUALIFICATION in Willoughby Municipal Court, Case Nos.
19CRB01630, 19CRB01631, and 19MIS00001.

O’CONNOR, C.J.

{¶ 1} Michela Huth, attorney for defendants Jo Brantweiner and Nadine Bechtel, has filed an affidavit pursuant to R.C. 2701.03 and 2701.031 seeking to disqualify Judge Marisa L. Cornachio from presiding over the above-referenced cases. This is the second affidavit of disqualification that Ms. Huth has filed regarding the underlying cases. Her first affidavit was denied in an entry dated October 2, 2019. *See* Supreme Court case No. 19-AP-110.

{¶ 2} Ms. Huth alleges that Judge Cornachio’s removal is necessary based on posts on the judge’s Facebook page. However, pursuant to R.C. 2701.03(B), an affidavit of disqualification must be filed “not less than seven calendar days before the day on which the next hearing in the proceeding is scheduled.” This statutory deadline may be set aside only “when compliance with the provision is impossible,” such as when the alleged bias or prejudice occurs fewer than seven days before the

hearing date or the case is scheduled or assigned to a judge within seven days of the next hearing. *In re Disqualification of Leskovyansky*, 88 Ohio St.3d 1210, 723 N.E.2d 1099 (1999). Ms. Huth filed her affidavit on October 25, 2019—only four days before the scheduled jury trial in her clients’ criminal cases. Ms. Huth asserts that she could not have filed the affidavit earlier because she did not discover the Facebook posts until October 24, 2019. But the challenged posts are from March 2017, April 2017, August 2017, and May 2018. Ms. Huth has not explained why she could not have discovered the posts earlier. The mere fact that she did not discover the posts until five days before trial does not excuse her from the statutory deadline.

{¶ 3} The alleged bias or prejudice did not occur within seven days of the trial, and therefore, this is not a situation in which the filing deadline may be set aside—especially considering that this is Ms. Huth’s second disqualification request regarding the underlying cases. The affidavit of disqualification is dismissed as untimely.
