

IN RE DISQUALIFICATION OF NAVARRE.

THE STATE OF OHIO v. COLEY.

**[Cite as *In re Disqualification of Navarre*, 156 Ohio St.3d 1208,
2019-Ohio-850.]**

*Judges—Affidavits of disqualification—R.C. 2701.03—Under R.C. 2701.03(A),
chief justice lacks authority to rule on affidavit seeking disqualification of
judge before whom nothing is currently pending—Disqualification denied.*

(No. 18-AP-139—Decided January 3, 2019.)

ON AFFIDAVIT OF DISQUALIFICATION in Lucas County Court of Common Pleas
Case No. CR-199701449.

O’CONNOR, C.J.

{¶ 1} Joseph E. Wilhelm, counsel for the defendant, Douglas Coley, has filed an affidavit with the clerk of this court pursuant to R.C. 2701.03 seeking to disqualify Judge Lindsay D. Navarre from the above-referenced capital case.

{¶ 2} Mr. Wilhelm claims that an “appearance of judicial bias or prejudice” will exist if Judge Navarre hears the matter. Specifically, Mr. Wilhelm avers that before and after the defendant’s 1998 trial, Judge Navarre’s father “held a position of prominence within the Toledo Police Department” and that the police department was significantly involved in securing the defendant’s death sentence. According to Mr. Wilhelm, Judge Navarre will “be asked whether to reverse or uphold a high-profile conviction and death sentence that her father’s department had pursued so assertively.”

{¶ 3} In response, Judge Navarre submitted a copy of a judgment entry denying on similar grounds the defendant’s 2018 motion for recusal.

{¶ 4} Under R.C. 2701.03(A), the chief justice’s statutory authority to order disqualification of judges extends only to those matters in which “a proceeding [is] pending before the court.” Therefore, it is well settled that “the chief justice cannot rule on an affidavit of disqualification when * * * nothing is pending before the trial court.” *In re Disqualification of Hayes*, 135 Ohio St.3d 1221, 2012-Ohio-6306, 985 N.E.2d 501, ¶ 6; *see also In re Disqualification of Grossmann*, 74 Ohio St.3d 1254, 1255, 657 N.E.2d 1356 (1994) (“[The] language [of the statute] clearly limits the authority of the Chief Justice in determining the existence of interest, bias, prejudice, or disqualification to matters pending before the court of common pleas”). Here, Mr. Wilhelm avers that “[t]here are no proceedings pending in Mr. Coley’s case that are before Judge Navarre at this time.” The trial court’s docket indicates that in April and August 2018, Mr. Coley filed a motion for leave and a motion for recusal, respectively, but Judge Navarre denied those motions on December 11, 2018—before Mr. Wilhelm filed this affidavit of disqualification. Because nothing is *currently* pending before Judge Navarre, there is no statutory or practical basis for ruling on the bias claims raised in Mr. Wilhelm’s affidavit.

{¶ 5} As a reason for denying the defendant’s recusal motion, Judge Navarre stated that filing an affidavit of disqualification under R.C. 2701.03 “is the exclusive means by which a litigant may claim that a common pleas judge is biased and prejudiced.” As previously explained, however, “an affidavit of disqualification is not the ‘only avenue’ to raise a claim of judicial bias.” *In re Disqualification of Zmuda*, 149 Ohio St.3d 1241, 2017-Ohio-317, 75 N.E.3d 1255, ¶ 11, quoting the judge’s response to the affidavit filed in that case. And “[c]ounsel and parties to pending cases are encouraged to resolve potential disqualification requests prior to invoking the formal procedures set forth in Section 5(C), Article IV of the Ohio Constitution and R.C. 2701.03.” *In re Disqualification of Kontos*, 94 Ohio St.3d 1224, 1225, 763 N.E.2d 595 (2001). However, any attempt to obtain

a judge's recusal must be made in consideration of the filing requirements of R.C. 2701.03 and other principles underlying the affidavit-of-disqualification process.

{¶ 6} The affidavit of disqualification is denied. Mr. Coley or his counsel may file another affidavit in the future if any matter becomes pending before Judge Navarre in the underlying case.
