

IN RE DISQUALIFICATION OF CARROLL.

HOLLIDAY v. CALANNI ENTERPRISES, INC.

**[Cite as *In re Disqualification of Carroll*, 160 Ohio St.3d 1264,
2020-Ohio-3094.]**

*Judges—Affidavits of disqualification—R.C. 2701.03 and 2701.031—Affiant failed
to demonstrate bias or prejudice—Disqualification denied.*

(No. 20-AP-029—Decided April 9, 2020.)

ON AFFIDAVIT OF DISQUALIFICATION in Lakewood Municipal Court Case No.
2018CVI01295.

O’CONNOR, C.J.

{¶ 1} Kenneth D. Myers, counsel for the defendant, Charles Calanni, has filed an affidavit pursuant to R.C. 2701.03 and 2701.031 seeking to disqualify Judge Patrick Carroll from the above-referenced case and all other cases involving Mr. Calanni, Mr. Myers, Mr. Calanni’s businesses, or Mr. Calanni’s immediate family members.

{¶ 2} Mr. Calanni is a frequent litigant in the Lakewood Municipal Court. Indeed, Mr. Calanni has appeared before the judge in more than 400 cases during the judge’s tenure on the bench. Mr. Myers alleges that Judge Carroll has exhibited a pattern of bias against Mr. Calanni and that the judge’s harsh treatment of him recently escalated after Mr. Calanni successfully appealed one of the judge’s decisions. To support his affidavit, Mr. Myers described the judge’s conduct in several recent cases involving Mr. Calanni.

{¶ 3} Judge Carroll filed a response to the affidavit and requests that it be denied. The judge denies having any personal bias or animosity against Mr. Calanni or Mr. Myers. The judge states that although Mr. Calanni can be a difficult

litigant, his courtroom conduct has not affected the judge’s legal decisions. The judge also explained his conduct in each of the cases cited in Mr. Myers’s affidavit.

{¶ 4} “The statutory right to seek disqualification of a judge is an extraordinary remedy * * *.” *In re Disqualification of Hunter*, 36 Ohio St.3d 607, 608, 522 N.E.2d 461 (1988). The significance of that remedy is heightened when, as here, an active litigant or practitioner seeks a blanket order disqualifying a judge from all of that person’s cases. *In re Disqualification of Park*, 136 Ohio St.3d 1214, 2013-Ohio-2734, 991 N.E.2d 244, ¶ 13. Upon thorough review of the record, Mr. Myers has failed to establish that a blanket order of disqualification is warranted.

{¶ 5} In disqualification requests, “[t]he term ‘bias or prejudice’ ‘implies 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.’ ” *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). “The proper test for determining whether a judge’s participation in a case presents an appearance of impropriety is * * * an objective one. A judge should step aside or be removed 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. In addition, a “presumption of impartiality” is “accorded all judges” in affidavit-of-disqualification proceedings. *In re Disqualification of Celebrezze*, 101 Ohio St.3d 1224, 2003-Ohio-7352, 803 N.E.2d 823, ¶ 7.

{¶ 6} Tension between a judge and a frequent litigant or practitioner is not uncommon in our adversary system. According to transcripts and other documents submitted with Mr. Myers’s affidavit, Judge Carroll has repeatedly expressed frustration with Mr. Calanni and Mr. Myers for conduct that the judge perceived as

improper. Mr. Calanni and Mr. Myers believe that some of the judge’s criticisms are unfair and that “Judge Carroll holds all past cases against Mr. Calanni and that those past cases with Mr. Calanni make it impossible for him to treat Mr. Calanni fairly on a case-by-case basis.” “Judges are certainly entitled to express dissatisfaction with attorneys’ dilatory tactics inside and outside the courtroom, but that dissatisfaction can and should be expressed in a way that promotes public confidence in the integrity, dignity, and impartiality of the judiciary.” *In re Disqualification of Corrigan*, 105 Ohio St.3d 1243, 2004-Ohio-7354, 826 N.E.2d 302, ¶ 10. And although each case must be decided on its own facts and merits, a judge is not required to ignore his or her prior courtroom experiences with a litigant or attorney—especially those persons who frequently appear before the judge and develop certain habits.

{¶ 7} Despite the tension between Judge Carroll and Mr. Calanni, Mr. Myers has not established that the judge is biased or that his frustrations have so infected Mr. Calanni’s cases that a disinterested observer might reasonably question the judge’s ability to evaluate fairly and objectively Mr. Calanni’s legal interests or Mr. Myers’s work as an attorney. This conclusion is bolstered by the neutral tone and content of Judge Carroll’s response to the affidavit of disqualification. *See In re Disqualification of Hoover*, 113 Ohio St.3d 1233, 2006-Ohio-7234, 863 N.E.2d 634, ¶ 8 (disqualifying a judge from all of an attorney’s cases when the judge held a fixed and longstanding resentment toward the attorney, which would have caused a reasonable and objective observer to question whether the judge could sit fairly and impartially on cases involving that attorney); *In re Disqualification of Squire*, 105 Ohio St.3d 1221, 2004-Ohio-7358, 826 N.E.2d 285, ¶ 6 (disqualifying a judge from an attorney’s case because the judge’s relationship with the attorney had become an impediment that may have prevented the judge from approaching the case with the requisite objectivity).

{¶ 8} If Mr. Myers believes that Judge Carroll has committed legal errors or improperly relied on information outside the record, he may appeal the judge’s decisions, as he recently did in *Holliday v. Calanni Ents., Inc.*, 8th Dist. Cuyahoga No. 108374, 2020-Ohio-571. And the fact that the court of appeals reversed the judge’s decision in *Holliday* does not automatically require Judge Carroll’s disqualification from that case. *See e.g., In re Disqualification of Kimmel*, 36 Ohio St.3d 602, 522 N.E.2d 456 (1987) (“a judge may preside over the retrial of a case even if that judge’s rulings of law were reversed on appeal”); *In re Disqualification of Floyd*, 135 Ohio St.3d 1249, 2012-Ohio-6336, 986 N.E.2d 10, ¶ 10 (“the mere fact that [a judge’s] decision was reversed in a critical opinion by the appeals court does not imply that she will be biased against the [appellants] or somehow retaliate against them”).

{¶ 9} Judge Carroll has noted that he respects the authority of the court of appeals and that upon remand, he immediately complied with its directive and scheduled a retrial. Although there may be circumstances in which a new judge should preside over a retrial after remand from a court of appeals, Mr. Myers has not proved that any such disqualifying circumstances exist here. *See Columbus v. Hayes*, 68 Ohio App.3d 184, 188-189, 587 N.E.2d 939 (10th Dist.1990) (remanding for further proceedings before a different municipal-court judge when the original sentencing judge, after being reversed, had made it clear that he did not intend to follow the mandate of the appellate court by declaring that he would impose the same sentence as before, even if he were reversed ten times); *In re Disqualification of Winkler*, 135 Ohio St.3d 1271, 2013-Ohio-890, 986 N.E.2d 996, ¶ 11 (disqualifying a judge from resentencing a defendant because a series of disparaging remarks that the judge made about the defendant at the initial sentencing could have caused an objective observer to question whether the judge had developed hostile feelings toward the defendant).

{¶ 10} The affidavit of disqualification is denied. The *Holliday* case may proceed before Judge Carroll.
