

**IN RE DISQUALIFICATION OF THOMAKOS.**

**THE STATE OF OHIO v. JAMERSON.**

**[Cite as *In re Disqualification of Thomakos*, 159 Ohio St.3d 1231,  
2020-Ohio-3095.]**

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

(No. 20-AP-023—Decided March 30, 2020.)

ON AFFIDAVIT OF DISQUALIFICATION in Tuscarawas County Court of Common  
Pleas, General Trial Division, Case No. 2019 CR 10 0433.

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**O’CONNOR, C.J.**

{¶ 1} Defendant Richard L. Jamerson has filed an affidavit pursuant to R.C. 2701.03 seeking to disqualify Judge Elizabeth Lehigh Thomakos from the above-referenced case.

{¶ 2} Mr. Jamerson avers that Judge Thomakos is biased against him based on her handling of one of his prior cases. Specifically, he claims that while incarcerated, he and others sent the judge documents proving his innocence but the judge refused to consider the evidence.

{¶ 3} Judge Thomakos filed a response to the affidavit and disputes the allegation that she cannot be fair and impartial. The judge thoroughly details her handling of the prior case. She acknowledges that while incarcerated, Mr. Jamerson sent to the court a letter claiming he was wrongfully imprisoned. According to the judge, she forwarded the letter to counsel but did not take any further action because she did not believe that the letter invoked the jurisdiction of the court.

{¶ 4} 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.

{¶ 5} Mr. Jamerson has not established that Judge Thomakos has hostile feelings toward him or that she expressed a fixed anticipatory judgment on any issue in the case. Nor has Mr. Jamerson set forth a compelling argument for disqualifying Judge Thomakos to avoid an appearance of partiality. “State and federal courts have been virtually unanimous in holding that—absent a showing of actual bias—a judge who presided over prior proceedings involving one or more parties presently before the court is not thereby disqualified from presiding over later proceedings involving the same parties.” *In re Disqualification of Bryant*, 117 Ohio St.3d 1251, 2006-Ohio-7227, 885 N.E.2d 246, ¶ 4. And nothing in Mr. Jamerson’s affidavit establishes that Judge Thomakos is biased against him based on her handling of the prior case.

{¶ 6} In deciding a disqualification request, “[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.” *In re Disqualification of George*, 100 Ohio St.3d 1241, 2003-Ohio-5489, 798 N.E.2d 23, ¶ 5. Those presumptions have not been overcome in this case.

{¶ 7} The affidavit of disqualification is denied. The case may proceed before Judge Thomakos.

January Term, 2020

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