

IN RE DISQUALIFICATION OF WERNER.

THE STATE OF OHIO v. QUINTILE.

**[Cite as *In re Disqualification of Werner*, 160 Ohio St.3d 1261,
2020-Ohio-4205.]**

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

(No. 20-AP-040—Decided June 23, 2020.)

ON AFFIDAVIT OF DISQUALIFICATION in Medina Municipal Court Case Nos.
20CRB00126, 20CRB00127, 20CRB00139, and 20CRB00141.

O’CONNOR, C.J.

{¶ 1} Defendant Nicholas R. Quintile has filed an affidavit pursuant to R.C. 2701.03 and 2701.031 seeking to disqualify Judge Gary F. Werner from the above-referenced cases, now pending for trial. This is the second affidavit of disqualification that Mr. Quintile has filed in these matters. His prior affidavit was denied in an entry dated April 10, 2020. *See* Supreme Court case No. 20-AP-031.

{¶ 2} In the present affidavit, Mr. Quintile alleges that for two reasons, Judge Werner has a conflict of interest. First, Mr. Quintile states that four of the witnesses who will testify against him are employed by the Brunswick police department. Judge Werner, Mr. Quintile asserts, formerly served as the mayor of Brunswick and in that capacity, developed personal and professional relationships with city employees, including police officers. Mr. Quintile further notes that the judge, while serving as mayor, administered oaths of office to two of the officers who will testify against Mr. Quintile. Based on these facts, Mr. Quintile believes that Judge Werner is predisposed to believe the testimony of the police officers, who Mr. Quintile asserts violated his constitutional rights. Second, Mr. Quintile

avers that Judge Werner and other city and county officials have a financial incentive to convict individuals and issue fines and forfeitures in order to fund their local budgets.

{¶ 3} Judge Werner filed a response to the affidavit and believes that there is no basis for his disqualification. According to the judge, Mr. Quintile has “overstated” the nature of the judge’s relationships with employees of the Brunswick police department when he served as mayor, and the judge denies any financial motivation in deciding cases before him.

{¶ 4} “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. “Generally, the more intimate the relationship between a judge and a person who is involved in a pending proceeding, the more acute is the concern that the judge may be tempted to depart from the expected judicial detachment or to reasonably appear to have done so.” *In re Disqualification of Shuff*, 117 Ohio St.3d 1230, 2004-Ohio-7355, 884 N.E.2d 1084, ¶ 6.

{¶ 5} Here, Judge Werner states that he served as mayor of Brunswick for one four-year term that ended in 2013. The judge notes that the position was part-time and that most of his activities were “ceremonial,” such as administering oaths of office. According to the judge, he did not have authority to hire, fire, or supervise city employees, including those in the police department. The judge describes his interactions with police officers while mayor as sporadic and infrequent, although professional and collegial. The judge notes, however, that he did not have a social relationship with any of the officers listed as witnesses in Mr. Quintile’s case. And the judge affirms that he is capable of assessing their testimony with the same

detachment and scrutiny that he would apply to the testimony of any witness appearing before him.

{¶ 6} Given the judge’s description of his relationship with the Brunswick police department and the four officers listed as witnesses, the record is insufficient to conclude that Judge Werner could be tempted to depart from his expected judicial neutrality. “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. Mr. Quintile has not set forth sufficiently compelling evidence to overcome those presumptions in this case.

{¶ 7} Similarly, Judge Werner expressly denies any financial motive when administering justice in his courtroom. And other than speculation, Mr. Quintile has failed to substantiate his allegation that Judge Werner has any sort of financial incentive to convict Mr. Quintile. “Allegations that are based solely on hearsay, innuendo, and speculation—such as those alleged here—are insufficient to establish bias or prejudice.” *In re Disqualification of Flanagan*, 127 Ohio St.3d 1236, 2009-Ohio-7199, 937 N.E.2d 1023, ¶ 4.

{¶ 8} The affidavit of disqualification is denied.
