

IN RE DISQUALIFICATION OF MILLER.

THE STATE OF OHIO v. KERNS.

**[Cite as *In re Disqualification of Miller*, 163 Ohio St.3d 1280,
2020-Ohio-6876.]**

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

(No. 20-AP-094—Decided December 2, 2020.)

ON AFFIDAVIT OF DISQUALIFICATION in Jefferson County Court of Common
Pleas, General and Domestic Relations Division, Case No. 18CR00196.

O’CONNOR, C.J.

{¶ 1} Defendant Charlotte A. Kerns has filed an affidavit pursuant to R.C. 2701.03 seeking to disqualify Judge Michelle G. Miller from the above-referenced case.

{¶ 2} On August 31, 2020, Judge Miller denied Ms. Kerns’s motion to withdraw her guilty plea. Ms. Kerns appealed the judge’s decision. On October 1, Judge Miller issued another entry stating that because of Ms. Kerns’s appeal, the court lacked jurisdiction to consider Ms. Kerns’s motion to withdraw her guilty plea.

{¶ 3} In her affidavit of disqualification, Ms. Kerns alleges that because Judge Miller had already denied her motion, the judge’s October 1 entry was a blatant attempt to deprive her of her right to appeal and demonstrated that the judge is not fair or impartial.

{¶ 4} Judge Miller filed a response to the affidavit and states that she vacated her October 1 entry, which she had issued in error.

{¶ 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. Ms. Kerns has not established that Judge Miller has hostile feelings toward her or has formed a fixed anticipatory judgment on any issue in the underlying case. Nor has Ms. Kerns set forth a compelling argument for disqualifying Judge Miller to avoid an appearance of partiality.

{¶ 6} That Judge Miller made a mistake—which she admitted to and attempted to correct—does not mean that she is biased against Ms. Kerns or that she cannot be fair and impartial in further proceedings. *See, e.g., In re Disqualification of Martin*, 143 Ohio St.3d 1270, 2015-Ohio-2920, 39 N.E.3d 1256, ¶ 15-16; *In re Muench-McElfresh*, 155 Ohio St.3d 1205, 2018-Ohio-5463, 120 N.E.3d 1, ¶ 3-4.

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