

IN RE DISQUALIFICATION OF LESKOVYANSKY.

BUTLAND, N.K.A. RITCHIE, v. BUTLAND.

[Cite as *In re Disqualification of Leskovyansky* (1999), 88 Ohio St.3d 1210.]

Judges — Affidavit of disqualification — Affidavit filed fewer than seven days before scheduled hearing — Statutory provision will be set aside only when compliance is impossible.

(No. 99-AP-024 — Decided March 30, 1999.)

ON AFFIDAVIT OF DISQUALIFICATION in Franklin County Court of Common Pleas,
Domestic Relations Division case No. 89-DR-06-1753.

MOYER, C.J. Affiant, Joy Ritchie, f.k.a. Butland, has filed a motion seeking reconsideration of the dismissal of her March 25, 1999 affidavit seeking the disqualification of Judge John J. Leskovyansky from further proceedings in the above-captioned case. By entry dated March 26, 1999, affiant's affidavit of disqualification was ordered stricken because it was filed fewer than seven days before the scheduled hearing date and did not contain facts to show why it could not have been filed timely. See R.C. 2701.03(B) and *In re Disqualification of Badger* (1989), 43 Ohio St.3d 601, 538 N.E.2d 1023.

The statutory provision that requires an affidavit to be filed on a timely basis will be set aside only when compliance with the provision is impossible, such as where the case is scheduled or assigned to a judge or the alleged bias or prejudice

occurs fewer than seven days before the hearing date. See *Household Consumer Discount Co. v. Pokorny* (1978), 60 Ohio App.2d 253, 256-258, 14 O.O.3d 232, 234, 396 N.E.2d 803, 806. Having reviewed affiant's motion for reconsideration, I cannot conclude that affiant's compliance with the statutory requirement was rendered impossible by the assertions contained in the motion.

For these reasons, the motion for reconsideration is overruled.