

IN THE SUPREME COURT OF OHIO

IN RE:

JAMES HELFRICH

Common Pleas Case Nos.
2007-CV-394 and 2011-MD-0006

From the Licking County
Court of Common Pleas

Supreme Court Case No. 13-AP-032

Judgment Entry

James Helfrich has filed an affidavit with the clerk of this court seeking to disqualify Judge Richard M. Markus, a retired judge sitting by assignment, from presiding over the above-referenced cases in the Court of Common Pleas of Licking County.

Helfrich alleges that Judge Markus has demonstrated bias, prejudice, and the appearance of partiality against him. According to Helfrich, Judge Markus (1) filed numerous, unsuccessful criminal contempt charges against Helfrich, (2) used abusive and prejudicial language toward Helfrich, (3) implemented instructions contrary to the vexatious litigator statute and local rules, (4) used these illegal instructions as a “weapon to deny Helfrich [his] legitimate rights to hold and defend real property,” (5) contacted local judges to inform them that Helfrich is not permitted to defend himself as a pro se litigant, (6) falsely accused Helfrich of harassing and intimidating a federal judge, (7) gave legal advice to opposing counsel to sue Helfrich, (8) advised a “newly appointed judge” how to rule in a case involving Helfrich, (9) had an award of \$118,000 reversed by the court of appeals, (10) is “likely to testify against Helfrich on criminal matters,” and (11) improperly found Helfrich to be a vexatious litigator so that the judge could collect money from taxpayers when Helfrich files an application to proceed.

Judge Markus has responded in writing to the allegations in Helfrich's affidavit, offering a detailed account of his handling of the underlying matters. The judge denies the allegations of bias and prejudice and maintains that Helfrich's complaints arise from his judicial efforts to control Helfrich's misconduct. Judge Markus maintains that he has never disfavored Helfrich personally and has treated him with courtesy and impartiality, and will continue to do so.

For the following reasons, no basis has been established to order the disqualification of Judge Markus.

Waiver

It is well settled that an affidavit of disqualification must be filed as soon as possible after the affiant becomes aware of circumstances that support disqualification, and that failure to do so may result in waiver of the objection. *In re Disqualification of Pepple*, 47 Ohio St.3d 606, 607, 546 N.E.2d 1298 (1989). Most of the alleged events giving rise to the disqualification request occurred between March 2011 – when Helfrich was declared a vexatious litigator and January 14, 2013 – when Judge Markus filed one of apparently several criminal contempt charges against Helfrich. If Helfrich believed that the judge's comments and actions – some of which occurred over two years ago – demonstrated bias or prejudice against him, he should have sought the judge's disqualification in a timely manner, and certainly well before April 16, 2013. As nothing in the record justifies the delay in filing the affidavit of disqualification, this constitutes an independent ground for denying the disqualification request. *See In re Disqualification of Glickman*, 100 Ohio St.3d 1217, 2002-Ohio-7471, 798 N.E.2d 5, ¶ 7-8.

Helfrich has, however, raised two allegations not subject to denial under the waiver doctrine. These allegations will be addressed in turn.

Judge as a Witness

Helfrich contends that Judge Markus must be disqualified because he is likely to testify against Helfrich in future criminal matters. Helfrich states that he is appealing certain criminal contempt charges and Judge Markus may be recalled as a witness if the court of appeals remands his case for a new hearing. In addition to being speculative, this claim is without merit. The mere possibility of the judge being called as a witness does not compel the judge's disqualification. *In re Disqualification of Gorman*, 74 Ohio St.3d 1251, 657 N.E.2d 1354 (there is no "rule requiring disqualification of a judge based solely on suppositions that the judge may be called as a witness or allegations that the judge possesses evidence material to the case at bar"). This would be particularly true where, as here, the affiant is not alleging that the judge is a material witness in the proceedings over which the judge is presiding.

Judge's Hearing Order

The second allegation not subject to waiver concerns an order issued by Judge Markus on April 1, 2013, that requires Helfrich to appear for a hearing on April 29, 2013. According to Helfrich, Judge Markus scheduled this hearing to discuss certain affidavits that are the subject of criminal contempt charges filed by Judge Markus against Helfrich. Helfrich states that Judge Crawford – who this court appointed to hear the contempt charges – found no evidence of criminal contempt. Helfrich contends that Judge Markus is ignoring Judge Crawford's ruling and has scheduled this hearing "to conduct his own investigation." Helfrich affidavit, at ¶ 8. For his part, Judge Markus apparently concedes that he intends to "inquire about the surrounding circumstances" regarding the affidavits in question "in order to prevent their reoccurrence." But the judge also avers that he accepts and will respect Judge Crawford's ruling on the contempt charges. Judge response, at 7-8.

Helfrich has offered nothing beyond mere speculation that Judge Markus will fail to respect Judge Crawford's contempt ruling. As to the judge's plan to inquire into irregularities regarding affidavits filed by Helfrich in his vexatious litigator docket, Helfrich has not submitted any evidence or otherwise explained how this demonstrates bias, prejudice, or another disqualifying interest. Vague or unsubstantiated allegations, such as those alleged here, are insufficient to establish bias or prejudice. *In re Disqualification of Walker*, 36 Ohio St.3d 606 (1988).

Conclusion

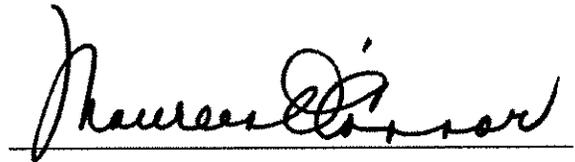
"A judge is presumed to follow the law and not to be biased, and the appearance of bias or prejudice must be compelling to overcome these presumptions." *In re Disqualification of George*, 100 Ohio St.3d 1241, 2003-Ohio-5489, ¶ 5. Those presumptions have not been overcome in this case. Accordingly, the affidavit of disqualification is denied. The case may proceed before Judge Markus.

Sanctions

Finally, it is observed that Helfrich has a history of abusing the statutory affidavit-of-disqualification process. Since 2007, Helfrich has filed a total of 10 separate requests to disqualify various trial and appellate judges that have presided over his cases. None of these affidavits was sustained. The statutory right to seek disqualification of a judge is an extraordinary remedy not to be used in a frivolous manner. Indeed, the filing of frivolous, unsubstantiated, or repeated affidavits of disqualification is an abuse of the purpose for which R.C. 2701.03 is intended, and a waste of judicial resources. See *In re Disqualification of Millard* (1992), 74 Ohio St.3d 1235, 657 N.E.2d 1343, and *In re Disqualification of Walker* (1992), 74 Ohio St.3d 1239, 657 N.E.2d 1346.

This court has previously cautioned Helfrich that an abuse of this process may result in sanctions against him. These admonitions, however, have been ignored. Accordingly, it is sua sponte ordered that James Helfrich is found to be a vexatious litigator under S.Ct.Prac. R. 4.03. Helfrich is hereby prohibited from continuing or instituting affidavit-of-disqualification proceedings in this court without first obtaining leave. Any request for leave shall be submitted to the clerk of court for the court's review.

Dated this 26th day of April, 2013.

A handwritten signature in black ink, appearing to read "Maureen O'Connor", written over a horizontal line.

MAUREEN O'CONNOR
Chief Justice

Copies to: Kristina D. Frost, Clerk of the Supreme Court
Hon. Richard M. Markus
Licking County Clerk of Courts
James Helfrich