IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO, ex rel. MATTHEW A. THOMPSON Address: 37068 Sandy Ridge Drive North Ridgeville, Ohio 44039 Relator, v. **THE HONORABLE CHIEF JUSTICE OF THE SUPREME COURT OF OHIO SHARON L. KENNEDY** Address: 65 South Front Street Columbus, Ohio 43215-3431 Respondent,	**CASE NO:** **ORIGINAL ACTION - WRIT OF MANDAMUS** **COMPLAINT FOR WRIT OF MANDAMUS** **VOLUME 1 OF 2**

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RELATOR, *PRO SE*

COMPLAINT FOR WRIT OF MANDAMUS

I. Preliminary Statement

Matthew A. Thompson ("Relator"), has filed the instant complaint in mandamus because the Honorable Chief Justice Kennedy, Respondent, has denied Relator's right that his claim, that Judge Swenski should be disqualified from presiding over Case #19DU085588, be determined "by due course of law" as guaranteed by Article I Section 16 of the Ohio Constitution. In this matter, due course of law has been set forth in R.C. §2701.03(E). Chief Justice Kennedy has a duty to "pass upon the disqualification" of Judge Swenski as "directed by" R.C. §2701.03(E) pursuant to Article IV Sections 5(C) and 18 of the Ohio Constitution. Relator has no adequate remedy in the ordinary course of law. The crux of the problem appears to be the failure to recognize the distinction between statutes providing authority for judges, Justices, and the Chief Justice to act in a ministerial capacity versus a judicial capacity. The invocation of the Chief Justice's duty pursuant to Article IV Section 5(C) to pass upon the disqualification of judges of common pleas courts has been explicitly set forth in R.C. §2701.03, which directs not only the Chief Justice or her designee but the clerk of the supreme court to strictly adhere to those procedures. In this case, Chief Justice Kennedy has deviated from those procedures in applying various published decisions of prior Chief Justices. Thus, Relator seeks relief in a writ of mandamus ordering Chief Justice Kennedy to comply with the mandated procedure set forth in R.C. §2701.03(E) regarding the Affidavit of Disqualification filed in Case #23-AP-116.

Further, pursuant to R.C. §2701.03(D)(1), upon acceptance for filing by the clerk of the supreme court, Relator's affidavit of disqualification "deprives [Judge Swenski] of any authority to preside in the proceeding until the [Chief Justice] rules on the affidavit pursuant to division (E) of this section." Since, as alleged herein, the Chief Justice has not yet ruled on the affidavit

pursuant to R.C. §2701.03(E), Judge Swenski's deprivation of authority to preside in the underlying proceeding remains effective as a matter of law. However, due to the ambiguity in Judge Swenski's authority caused by the Chief Justice's decision dated September 6, 2023 purportedly lifting the deprivation of authority, Relator is filing Relator's Emergency Motion to Reinstitute Judge Swenski's Deprivation of Authority to Preside in Proceeding Pursuant to R.C. §2701.03 and to Expedite this Original Action in Mandamus with this Complaint.

II. Parties

Relator Matthew A. Thompson is a private citizen residing in Lorain County, Ohio.

Respondent Honorable Chief Justice Sharon L. Kennedy is the duly elected Chief Justice of the Supreme Court of Ohio.

III. Jurisdiction and Standard for Issuance of Writ of Mandamus

This court has original jurisdiction over this matter pursuant to Article IV, Section 2(B)(1)(b) of the Ohio Constitution. To be entitled to a writ of mandamus, Relator must demonstrate "(1) that he has a clear legal right to the relief prayed for, (2) that respondents are under a clear legal duty to perform the acts, and (3) that relator has no plain and adequate remedy in the ordinary course of the law." *State ex rel. Berger v. McMonagle* (1983), 6 Ohio St. 3d 28, 29; citing *State ex rel. Harris v. Rhodes* (1978), 54 Ohio St. 2d 41, 42 [8 O.O.3d 36]; *State ex rel. Heller v. Miller* (1980), 61 Ohio St. 2d 6 [15 O.O.3d 3], paragraph one of the syllabus; *State ex rel. Westchester v. Bacon* (1980), 61 Ohio St. 2d 42 [15 O.O.3d 53], paragraph one of the syllabus. "When the right to require the performance of an act is clear and it is apparent that no valid excuse can be given for not doing it, a court, in the first instance, may allow a peremptory mandamus." R.C. §2731.06.

IV. Facts

1. On August 7, 2023, Relator presented for filing an Affidavit of Disqualification (the "AoD") against Judge Lisa Swenski, a judge of the Lorain County Court of Common Pleas – Domestic Relations Division, who is presiding over Case #19DU085588 in which Relator is a party.

2. On August 7, 2023, the clerk of the Supreme Court of Ohio accepted the AoD for filing and forwarded the AoD to Respondent, establishing Case #23-AP-116.

3. Pages 17-20 of Exhibit 3 of this Complaint contain an Exhibit List for the AoD where the Exhibit numbers cited in the following paragraphs can be cross-referenced to page numbers in Exhibit 3 (the 260-page AoD), thereby facilitating quick lookup of the evidentiary documents cited in these paragraphs. Numbered paragraph #3 of the AoD reads:

> All exhibits listed in 'List of Incorporated Exhibits' following this affidavit are hereby incorporated as if written herein. References to those exhibits in this affidavit are formatted as [ExhibitNbr], [ExhibitNbr, PageNbr], or [ExhibitNbr, PageNbr, LineNbr].

4. Numbered paragraph #4 of the AoD reads:

> On May 5, 2016, Yuliia Thompson ("Mother") and I, Matthew A. Thompson, ("Father") married. She had immigrated to the U.S. on a K-1 fiancée visa to marry me. In October 2018, our son ("Child") was born while Valentyna ("Krets") was visiting on a B-1 tourist visa. Krets' six-month authorized stay in the U.S. was through April 2, 2020. After Child was born, Mother and Krets sought to exclude me from active involvement in the parenting of Child. On January 15, 2019, Mother notified me, with my father, Bill Thompson, present, that she intended to divorce me and take Child to Ukraine. She explained that I would be unable to independently care for Child after Krets returned to Ukraine. Various events occurred over the next day or so that convinced me that I must take immediate action or Mother would take Child pursuant to some plan I did not have time to figure out yet that would lead to Child being taken to Ukraine. I engaged Attorney Anthony ("Pecora") who filed paperwork for an Emergency Temporary Custody order, which Judge Swenski granted on January 16, 2019. [9], [8] Mother filed for divorce on January 25, 2019 and Judge Swenski was the presiding judge over that case. To protect myself from being victimized by false allegations to cause me to lose Child, I recorded, usually audio but sometimes video, interactions in the marital residence.

5. Numbered paragraph #5 of the AoD reads:

> At the time, I believed Mother's decision resulted from post-partem effects and/or Krets' selfish desire to have her daughter return to Ukraine with Child. In March 2019, after

Mother learned the divorce would not be resolved quickly, Krets filed a request for an extension of her stay with DHS USCIS for which Mother provided a statement supporting the request. Through subsequent events, I learned that Mother had made false allegations that I suffered from mental health issues, which also served to rebut that she planned to take Child to Ukraine, which she persisted in denying once litigation began. Upon learning that an extension had been filed for Krets and believing she was the real threat to my family and Child, I provided information about Krets' real conduct for purposes of causing the denial of the extension and protecting Child from her destructive conduct.

6. Numbered paragraph #6 of the AoD reads:

On July 28, 2019, Mother struck me twice in the head directly in front of Child, which was video recorded. Mother was arrested that day and convicted of R.C. §2919.25 Domestic violence in February 2020.

7. Numbered paragraph #7 of the AoD reads:

In September 2019, as Krets' next deadline to return approached on October 2, 2019, she filed a second request to extend her stay through April 2, 2020. On October 28, 2019, two DHS immigration fraud investigators interviewed me at the marital residence about Mother. They introduced themselves to Mother and Krets before requesting I take them to an area of privacy. The officers made it clear to me that they were investigating Mother, who had a pending application to overcome the "marriage fraud" hurdle before receiving a ten-year green card, which we had filed jointly in November 2018 as part of her immigration process. I answered their questions honestly, as required by law. Shortly thereafter, I felt no option but to withdraw from the joint petition as I no longer believed she entered the marriage in good faith, a fact to which I would be required to affirm under oath during a subsequent interview as part of the process. I knew Mother had an alternative route to her ten-year green card by an individual application, the "divorce waiver", in which I would have no involvement. Immediately after the interview, Mother notified her attorney and all attorneys on the case became aware. [11] From this point forward, Case #19DU085588 was no longer anything resembling a legal proceeding.

8. Numbered paragraph #8 of the AoD reads:

Based on evidence, as of November 21, 2019, Pecora, Sylkatis, Nickolls, and Mother had agreed upon a plan to intimidate me by threatening the permanent loss of Child to Ukraine unless I ensured that Mother was not deported. They agreed I could never be afforded the opportunity to present evidence in court regarding Mother's intention to take Child to Ukraine. They agreed to force me to accept a shared parenting plan because I had been seeking full custody as a protective measure against Child being taken to Ukraine. Since Mother did not care about deportation, as it was her intent to relocate back to Ukraine anyways, Mother required the agreement provide her the right to cause the Child's international travel. And so it was, on that day Sylkatis set the terms to which I would be forced to accept without any opportunity to contest the threat of Child never being returned from Ukraine. [13] Judge Swenski's direct and indirect, through her magistrates, involvement is documented by the record of every proceeding from that point forward

demonstrating a complete disregard for the law and a focus only on the group's plan to intimidate me with permanent loss of Child unless I agreed to their terms.

9. Numbered paragraph #9 of the AoD reads:

I was denied a hearing on the threats to Child when the group compelled Mother to move out of the marital residence [24,3] so they could argue that all of my evidence prior to the move out would be irrelevant in their future argument that I had no basis for full custody. [26] They knew I had Mother's phone records [7] indicating she made no calls to local apartment complexes, but dozens of divorce attorneys prior to January 15, 2019 which showed the divorce was her plan and not a response to my obtaining of the ETC order on January 16, 2019. On October 22, 2019, after Mother requested Child's identity documents so she could move with him to an apartment, I notified Pecora and GAL Nickolls of my strong insistence on a contested hearing. [10] Nickolls had just rebuked her conduct in the house in an email earlier that day. On November 21, 2019, despite my clear instruction to Pecora and Nickolls, Mother initiated a search for an apartment [12], the zeal of which was rivalled only by her search for a divorce attorney on January 10, 2019. At the December 9, 2019 settlement conference, Sylkatis announced that Mother was moving into an apartment in four days and I was denied any opportunity for a contested hearing. [1,13,18],[1,16,14] Pecora's prior knowledge and agreement to deny my right to contest the custody modification is obvious because without Pecora's pre-approval, Sylkatis and Nickolls would have never compelled Mother to move out without Child, "It became clear that the best interest of the minor child would be best served by having one of the parents move from the marital residence." [24,3] Sylkatis framed Pecora's knowledge as only from "before we began here today." [1,13,18] The Court insisted on reaching an agreement [1,22,23], despite its knowledge that it was improper for it to require it [1,24,5], by doing something "(indiscernible)". [1,23,7]

10. Numbered paragraph #10 of the AoD reads:

The purpose of a settlement conference is to try to bring the parties to a settlement agreement by honest presentation of the issues dividing them. What I experienced on September 9, 2019 was a coordinated effort to suppress my concerns, to deceive me about my legal options for protecting Child from permanent removal to Ukraine, and to intimidate me, a witness in both a federal case and a domestic violence case against Mother, into subverting both cases otherwise face the permanent loss of contact with my son. [1,7,21] The conference was all about immigration, which is the only matter over which the Court had no jurisdiction. [3,6,20],[3,8,11] The Court discussed their immigrant origins [1,19,15], and admitted that "If this was five or six years after the fact, after all the immigration stuff was done, that would be a whole different matter." [1,18,4] The language blaming Krets was part of the agreed-upon plan to deflect blame from Mother to Krets to fabricate a defense for Mother in removal proceedings. [1,5,10] Despite my repeated efforts to provide evidence to Nickolls and Pecora, they refused to acknowledge my true concerns and supporting evidence, instead focusing on their November 21, 2019 plan. [14]

11. Numbered paragraph #11 of the AoD reads:

On May 13, 2020, a second settlement conference by Zoom was substituted for the COVID-postponed trial date. During that conference, Judge Swenski said:

If, indeed, somebody is calling ICE, or Customs, or whomever, trying to get Misses deported, that would be bad. Because I could end up giving sole custody of [Child] to Mother and she could end up having to live in Ukraine because she's been deported.

Judge Swenski characterized being a witness in a federal investigation and subsequent federal removal proceedings as "bad" and strongly indicated that she may cause me to permanently lose contact with Child as a result. Judge Swenski also ordered briefing on Mother's immigration status at that conference, even though neither she nor any party has any authority to obtain that information from DHS let alone interfere with those proceedings.

12. Numbered paragraph #12 of the AoD reads:

On September 6, 2020, I reported to the North Ridgeville Police (NRPD) an incident of sexual abuse of Child perpetrated by Mother which I had witnessed and audio recorded. Upon listening to the recording, NRPD took a report and began an investigation for R.C. §2907.03, Sexual Battery of a child under 13, a second-degree felony. [15] I notified Mother, the GAL, and my attorneys that I would not be transferring custody of Child to Mother on Monday September 7, 2020 (Labor Day Holiday).

13. Numbered paragraph #13 of the AoD reads:

On September 8, 2020 at 7:58am, Sylkatis filed a Motion for Emergency Temporary Custody to suspend any contact between Father and Child. [17] The only evidence was Mother's testimony that she had "concerns" about Child's safety [2,6,12], which was refuted by her own testimony that she had turned down multiple offers to visit Child during that time. [2,4,6] The Court granted the fraudulent ETC order, which denied any contact between Father and Child, and scheduled the review hearing to coincide with the start of trial. [18] Sylkatis admitted the ETC was not related to any harm to the child and that Pecora and Nickolls were both notified ahead of time, neither raising issue with the lack of reason for an ETC order. [2,2,20] Even though the NRPD had an active investigation of Mother's sexual abuse of Child, they hand-delivered Child to Mother upon removing him from my residence less than thirty-six hours after opening the investigation. [19] The NRPD incident report shows this to be a "low priority", "routine" status escort, but weren't they taking a child from his father who had suffered a complete break from reality to the extent that his child was not safe in his care ? Anyways, a couple hours later, NRPD Detective Young emailed me that he had done no actual investigation himself and was waiting for someone from children services who "made the final decision." [20] In 2022, NRPD Lt. Petek notified me that the investigation was closed as "unfounded" with "No evidence of crime." Yet, had the NRPD had the audio recording translated from Russian, they would have found Krets' narration of the penis kissing corroborating the abuse of Child as it happened, *e.g.* "Only mommy can kiss your [slang]".

14. Numbered paragraph #14 of the AoD reads:

According to GAL Nickolls' records, a meeting between the attorneys and the Court was conducted on September 8, 2020. [16] However, no "Zoom status" or any other hearing was scheduled for that day nor was the occurrence of the hearing documented on the docket. I first learned of this "secret meeting" with the Court upon receiving GAL Nickolls' records in June, 2022. The timing of this meeting fits the granting of the ETC order and the shutdown of the NRPD investigation into the sexual abuse of Child.

15. Numbered paragraph #15 of the AoD reads:

During the pendency of the ETC order, Pecora, Henry, Nickolls, Sylkatis and Judge Swenski each made it very clear that the ETC Motion and Order were not for legitimate reasons, but to exert additional leverage over me to succumb to their coercion and agree to their terms of settlement from November 21, 2019. Pecora claimed the ETC was such a hurdle to be overcome throughout the week [21],[23],[25], but during his "opening argument", he admitted that the ETC was granted "with no evidence or any testimony that indicated that this minor child was in fact in irreparable harm or danger with father." [3,14,15] Sylkatis and Henry exchanged text messages, not in negotiation, but for Henry to update Sylkatis on the efforts to coerce me to agree to Sylkatis' terms, within two days of the ETC order. [22] Henry further admitted he believed I wanted a trial to cause Mother's deportation. [28] GAL Nickolls submitted her GAL Report on September 10, 2020 wherein she recommended 50-50 shared parenting and reported "there is nothing in the records to indicate there are any mental or physical health issues of the parents." [24,5] Nickolls addressed the ETC "Father recently withheld time for mother alleging that mother raped their son. An emergency hearing was held and mother now has temporary custody of the child." [24,5] In his opening statement, Sylkatis said "I think the evidence, and pretty much everyone will agree, that these are good parents separately." [4,9,13] Sylkatis addressed the ETC "Just recently, this past week, he has tried to report mother to the police for raping the minor child, which this Court prudently saw to put the child into mother's custody after that." [4,11,17] His usage of "tried to report mother..." seems to indicate my ability to report the conduct failed... for some reason. Even Judge Swenski said "I think your son is a good father and I have no fear that he would harm the child." [4,27,7] At the time she made that statement, the time for the scheduled review hearing had passed hours before and I had been denied contact with Child for over a week while everyone involved has acknowledged, on the record, that the ETC order was granted without just cause. Judge Swenski wrapped up the true purpose of the ETC when she dismissed it as a "dead issue" immediately upon agreement to Sylkatis' terms of settlement. [5,14,1] What these people did, in abusing the process of this litigation to fraudulently cause the NRPD to remove Child from my residence for the purpose of extorting me to agree to their terms, *e.g.* payment of their ransom, seems like a violation of R.C. §2905.01 Kidnapping. Further, what happened to the NRPD investigation into the R.C. §2907.03 Sexual battery of my son, which was terminated upon the ETC order execution ?

16. Numbered paragraph #16 of the AoD reads:

The basis for Judge Swenski's disqualification is on full display in the September 16, 2020 transcript [4], however additional points, including Judge Swenski's knowledge that my interests were not being represented by my counsel, benefit from explanation. The entire

opening argument was a ruse. Days prior, Pecora had suggested that I emphasize "Russian aggression", which is a point he brought up in opening argument so that they could shake my confidence in my attorney when Judge Swenski aggressively attacked that point. [4,13,10], [4,16,1] The "you are correct in that I have not yelled at you in the many years that I have been on the bench..." indicates obvious prior coordination on this exchange and how Judge Swenski would react. Judge Swenski and Pecora coordinated their efforts to deceive his client. Days prior, I had inquired about "a fall-back Shared Parenting Plan" being precluded after a trial [27], an idea which appears to have also been communicated to Judge Swenski for her to deny any possibility of. [4,12,7] Neither the GAL nor Sylkatis had even suggested that shared parenting was not in the child's best interest. Also, Judge Swenski referenced a "weird twist and turn legally" [4,30,19] after having spoken with the attorneys upon return from lunch. Just prior to returning from lunch after opening arguments, Pecora expressed that he may have to withdraw on ethical grounds in the client conference room. Upon returning he asked for a conference with Judge Swenski. [4,19,15] Opening statements had been made and "Plaintiff call your first witness" could never be interpreted as a "weird twist and turn legally". Judge Swenski knew before threatening my parents with the loss of their only grandson that she would not be presiding over a trial. Judge Swenski even admitted to her intentional deception, "I want them both to have the baby, too, which is really why I'm doing this very unusual maneuver." [4,31,21] A domestic relations judge has clear authority to permit both parents to share their child, except when powers beyond her jurisdiction prevent that. Can it even be argued that Judge Swenski believed she had the legal authority to execute this "very unusual maneuver"? Also, why would a party in Mother's position, upon listening to Judge Swenski's words, make any concession whatsoever to avoid a trial, which she knew would result in full custody for her and her attorney fees paid? [4,8,1] Obviously, everyone knew what was going on except the victims of Judge Swenski's threats – my elderly parents and me. All of this took place instead of the scheduled review hearing on the fraudulent ETC order. Judge Swenski both denied any knowledge of the sexual abuse allegation but also expressed desire to question me about my actions without any interest in the actual abusive conduct itself [4,17,4], even though she read the GAL report which included the allegation. [4,4,17],[24,5] Judge Swenski also said "If his goal was to keep the child from going to live in Ukraine, there is one way today to do that. Just one. And it's a way that I have to kind of do this for. I have to kind of hold my nose and say, okay. I'll accept this agreement that I normally wouldn't accept, but because it suits both of their purposes and the child, because otherwise, I'm looking at sole custody to her." [4,35,9]

17. Numbered paragraph #17 of the AoD reads:

The next day, after the coerced agreement had been made, Judge Swenski was more open about her intentions. She said "if they find out there's something else I can do" [5,12,16], referring to subverting the federal case against Mother. The transcript of that day is rife with Judge Swenski's comments on immigration. As of the filing of this affidavit, Mother is still in removal proceedings.

18. Numbered paragraph #18 of the AoD reads:

In late April 2022, I had pieced together significant evidence of the criminal conduct carried out in the divorce action and reported it to the NRPD and the Lorain County Prosecutor's Office ("LCPO"). The LCPO immediately notified Judge Swenski of my allegations and, in early May 2022, Mother filed to reinvoke the continuing jurisdiction of Judge Swenski, seeking full custody of Child, even though she had a conviction for R.C. §2919.25 Domestic violence, was in removal proceedings, and knew that I had an audio recording of her sexual abuse of Child. I believe, just like the prior action, they intended to abuse the process of this proceeding to litigate me into submission to retaliate and intimidate me for reporting their criminal conduct to the authorities. They likely anticipated me to hire an attorney until I was completely depleted financially and submitted. I proceeded pro se and fought to protect my relationship with my son the only way I could. As they could not financially break me with my own attorney fees, Judge Swenski is unlawfully charging me with Sylkatis' attorney fees.

19. Numbered paragraph #19 of the AoD reads:

In the current action, Judge Swenski provided clear evidence that I would not be able to litigate my right to parent my child in anything even resembling "the unquestioned neutrality of an impartial [court]". *In re Disqualification of Floyd*, 101 Ohio St.3d 1215, 2003-Ohio-7354, 803 N.E. 2d 816, ¶10. At every opportunity, Judge Swenski has ruled exactly opposite to the law. On September 1, 2022, her Court issued an order for a psychological evaluation without any hearing. [29],[30] The order did not comply with Civ.R. 35. Judge Swenski adopted Magistrate's Decision disregarding the deficiencies of the order, simply ruling that Civ.R. 35 was inapplicable and that R.C. §3109.04 provided jurisdiction to issue the order. [33],[35],[36] Obviously, statutes are the authority for jurisdiction, but Civ.R. 35 must be followed in issuing such an order. When I filed a motion to vacate the GAL appointment because jurisdiction was conditioned upon the Court interviewing the child pursuant to R.C. §3109.04(B)(2), Judge Swenski ruled that jurisdictional authority came not from statute but from Sup.R. 48.02(F). [43],[44] Judge Swenski has granted Rule 11 Sanctions and ordered that I pay $4,000 in attorney fees to Sylkatis because I invoked relief pursuant to Article I Section 10a of the Ohio Constitution ("Marsy's Law") [43],[44], which Judge Swenski simply denied claiming such rights are inapplicable in her Court. [31],[32],[34] There was no evidentiary hearing for any presentation of required elements such as willfulness or even anything beyond Sylkatis' pleaded desire for $4,000, completely unsupported by evidence. Judge Swenski also sentenced me to thirty days in jail and to pay $1,000 to Sylkatis for non-compliance with the unlawful order for a psychological examination, even though Civ.R. 37(B)(1)(g) prohibits it even if it was a lawful order. Further, because Mother had contracted with Dr. Koricke who required $3,000 total for two parties, Judge Swenski ordered that as a purge condition, I must contract with Dr. Koricke specifically, even though the order made no such specification. This was required for no reason other than to unlawfully force me to pay Mother an additional $1,500.

20. Numbered paragraph #20 of the AoD reads:

On May 12, 2023, I learned that GAL Rewak had filed a motion [37] for and was granted an ex parte emergency order [38] to suspend my parenting time until I consented to his

entry into my home and to meet with him. As I was near to his office, I brought Child to his office, after calling him, in an attempt to satisfy his condition so that Child would not once again suffer the compelled removal from his father's love and affection. After a quick stop at the Elyria Police Department where Rewak reported that I had kidnapped him at his office, which he referenced in his testimony at the review hearing [6,12,15], [6,22,10], we went to Court where I attempted to have the ETC order vacated [39], unsuccessfully as "GAL testified that Defendant is still not in compliance." [40] In his testimony, Rewak deflected responsibility for the ETC motion to the Court. [6,21,14],[6,31,11] At the review hearing, the order was vacated. [6,30,9] Thus, the removal of Child from my parents' residence for whatever ulterior purpose was sought by this legal nullity was carried out, once again, when police removed Child from his father. [41]

21. Numbered paragraph #21 of the AoD reads:

Other than Rewak's deflection of responsibility, there was little evidence that Judge Swenski was the impetus for the May 12, 2023 ETC order. However, at the settlement conference on July 14, 2023, Judge Swenski repeatedly inquired "What do I have to do to have you meet with my GAL?" or words to that effect. Judge Swenski also said "Sir, the Fourth Amendment doesn't apply here." Judge Swenski also said "I can't go to your house and observe. I have to have a third party do it." She continued "So, sir, the Fourth Amendment doesn't apply here. He's not coming in to do a search and seizure." Outrageously, Judge Swenski's attempts to convince me to allow Rewak into my home were expressed while she also agreed with Rewak that I should have been charged with kidnapping for the "meeting" at his office, which he also discussed at the settlement conference. So, Judge Swenski and Rewak are trying to convince someone that they believe should have been charged with kidnapping Rewak to allow Rewak into his home alone. Completely disingenuous and blatant impropriety. Of course, Rewak was seeking entry into my home the very night of the alleged kidnapping. [42]

22. Numbered paragraph #22 of the AoD reads:

Judge Swenski also made statements during the settlement conference indicating that she may very well have been the impetus behind the shutdown of any investigation into the sexual abuse of Child. After Rewak spoke on the sexual abuse allegation having languished without any responsible authority taking action, he sought the correct word "The end result is...", to which Judge Swenski interjected "It's unsubstantiated" at 10:48:02am. Shortly thereafter, Rewak said "I won't pass judgment on that allegation, but the belief that something is going to happen...", to which Judge Swenski interjected "Despite several organizations and entities declining to arrest" at 10:48:46am. Rewak previously stated "Regardless of what happened with that incident, and I can't pass judgment cause I don't have all the evidence of who was hurt and what was heard or observed what happened. But I will say that the continued belief that something is going to happen out of that, well, it's bordering on fantasy at this point" at 10:48:16am. Judge Swenski states "Certainly not going to be a factor in my case" at 10:49:12am. Judge Swenski made it clear that she would not even allow evidence of Mother's sexual abuse of Child, "When we come to trial in August, I am not going to hear any evidence about attempts to arrest her. I am not going to hear anything about sexual abuse." at 11:03:59am.

> Rewak, just like all other agencies, disclaims having done any investigation into the actual allegation and Judge Swenski's response is not to inquire about the veracity of the allegation or who investigated or why not, but is content to conclude that it will not be a factor in "her case" and she will not permit evidence of the sexual abuse to be introduced at trial, despite its statutory relevance. *R.C. 3109.04(F)(1)(h)*. I provided exact, to-the-second, timestamps of these statements to assist Judge Swenski in confirming their accuracy in her response.

23. On August 7, 2023, Respondent entered an order recognizing Judge Swenski's deprivation of authority to preside in the underlying proceeding and ordering Judge Swenski to file a written response which shall "specifically and fully address, in detail, each allegation" in the AoD.

24. On August 28, 2023, Judge Swenski filed her response to the AoD ("the Response").

25. On page 1, the Response reads:

> As an initial matter, Affiant, Matthew Thompson ("Thompson") has presented no allegations within his Affidavit of Disqualification on which a claim of (1) interest, (2) bias, (3) prejudice, or (4) disqualification could be based upon against the Hon. Lisa Swenski ("Judge Swenski") pursuant to S.Ct.Prac.R. 21.01(C)(2). Most, if not nearly all the 22 Paragraphs included in Thompson's Affidavit consist of arguments, not allegations, that could have been brought forth on a direct appeal rather than through an affidavit of disqualification. Much of the rest of his Paragraphs either misunderstand the law and rules of evidence and procedure or willingly mischaracterize the Judge's actions (as evidenced by a clear reading of the transcripts that Mr. Thompson himself provides as exhibits) or continue Mr. Thompson's history of making unfounded or unsupported accusations of conspiracies against him by his attorneys, other attorneys, and others.

26. On page 2, the Response reads:

> In fact much of Mr. Thompson's complaints center on his divorce proceedings from September 16, 2020 and September 17, 2020 which ended with his agreement that Shared Parenting was in his son's best interests. He had the ability to litigate the final Judgment Entry of Divorce with the 9th District Court of Appeals back then, however, he chose not to do so. (Mr. Thompson would, however, ask for a stay in his post-decree contempt proceedings in 2023 in order to appeal to the 9th District Court of Appeals wherein he made a legally invalid argument regarding Marsy's Law that was inapplicable on its face. The 9th dismissed the appeal.)

27. Numbered paragraph #1 of the Response reads, in relevant part:

Regarding Paragraphs 1-7, 9-10, 12-14, and 19-20, there are no discernible allegations which pertain to any (1), interest, (2) bias, (3) prejudice, or (4) disqualification against Judge Swenski. Thompson has brought forth arguments in these Paragraphs which, as best as can be determined, appear to take issue with the merits of the case and therefore could have been brought forth on a direct appeal.

28. Numbered paragraph #2 of the Response reads:

Regarding Paragraph 11, Judge Swenski was informed by counsel that Thompson had been calling U.S. Immigration and Customs Enforcement to have Yuliia Thompson deported back to Ukraine. Mr. Thompson had a documented history of first wanting his wife NOT deported, then wanting and taking an active role in getting her deported --- as previously reported by counsel and the GAL --- during the divorce case himself. Judge Swenski's laborious and many explanations of what that might do to Mr. Thompson's ability to parent his child or have access to his child are mischaracterized here by Mr. Thompson as a threat to him for contacting INS (which is his right), when in fact it was a statement of what would most likely happen if his wife had sole custody and was deported to Ukraine. Mr. Thompson's own exhibits to his ADQ (the multiple transcripts) contain numerous ad nauseum explanations by the trial Court as to what could happen if she were deported during the case and had emergency temporary custody or sole custody. Additionally, to Judge Swenski's memory, all counsel had asked Judge Swenski to specifically address Mr. Thompson that it was not in his best interests if she were deported, and it was certainly not in the child's best interests.

29. Numbered paragraph #3 of the Response reads:

Regarding Paragraph 14, there was no "secret meeting" on September 8, 2020; it was an Ex-Parte Emergency Temporary Custody hearing conducted in accordance with local rules and heard by Magistrate Blake. There was not and never has been any coordination between Judge Swenski and any police department regarding a "shutdown" of an investigation into sexual abuse.

30. Numbered paragraph #4 of the Response reads:

Regarding Paragraph 15, Yuliia filed a motion for an Emergency Temporary Custody in September 2019 which was granted. Thereafter, the parties mutually agreed to settle the issues within the ETC by way of an agreed judgment entry of Shared Parenting and final divorce decree. A process that took counsel two full court days. Any remarks made by Judge Swenski pertained to how, by operation of law, the ETC was dissolved, and the agreed judgment entry that included Shared Parenting was controlling. Therefore, Mr. Thompson's ETC was moot, as – by law --- he had already testified under oath on September 16, 2020 that the Shared Parenting Plan was in his child's best interests. Mr. Thompson would again testify to same – again under oath --- the very next day when the rest of the divorce was resolved and concluded.

31. Numbered paragraph #5 of the Response reads:

Regarding Paragraph 16, Thompson presents arguments within this Paragraph that could liberally be construed as arguments in support of a claim of ineffective assistance of counsel against Thompson's counsel. To the extent that this Court determines that the arguments within Paragraph 16 are allegations, Judge Swenski denies any such allegations. Again, Mr. Thompson sometimes sees illicit coordination and conspiracy when the Judge does all that she can to be transparent and put everything on the record. The "weird twist and turn" statement made by Judge Swenski that Mr. Thompson misconstrues was in reference to a request by counsel that she talk with Mr. Thompson's parents who were both in the courtroom as support for him. (Something that Judge Swenski did as evidenced in the transcript.) Counsel believed that Mr. Thompson was not understanding what was happening and refusing to believe what the law allows in a sole custody vs. shared parenting plan. Indeed, Judge Swenski's memory is that Mr. Thompson's own attorney suggested that he may have a conflict with his client. Thompson's reference to the Judge's comment regarding "this very unusual maneuver" was again a reference to engaging in a dialogue with Mr. Thompson's parents. Finally, with reference to Judge Swenski stating that "I have to kind of hold my nose and say, okay. I'll accept this agreement that I normally wouldn't accept, but because it suits both of their purposes and the child, because otherwise, I'm looking at sole custody to her" was accurate and transparent: Judge Swenski believed that the child's best interests would be to have both Mother and Father in the child's life and that would be less likely if Mother were deported to Ukraine while she had sole custody, therefore, she was willing to accept and approve the Shared Parenting Plan despite her misgivings.

32. Numbered paragraph #6 of the Response reads:

Regarding Paragraph 17, Judge Swenski was responding to discussion regarding Mother's domestic violence conviction, which had been argued in open court had major problems. It apparently would also cause Mother major problems including deportation. Indeed, Judge Swenski mentions the word immigration many times that day in her voluminous explanations to Mr. Thompson's parents, to Defendant Mr. Thompson, to Plaintiff Mrs. Thompson, and to all counsel and the GAL. "If there's something else I can do" is again misconstruing Judge Swenski's offer to assist the parents and counsel and the GAL in, for example, expediting paperwork (as Judge Swenski had just granted Shared Parenting to Mother despite Mother's reportedly questionable Domestic Violence conviction) or anything else. Again, it was to effect Judge Swenski's Shared Parenting decree and her belief that having the child present in the United States and available to both parents was in the child's best interests. It was clear to anyone in the courtroom, except apparently Mr. Thompson, that Judge Swenski was again trying to have her Court order followed.

33. Numbered paragraph #7 of the Response reads:

Regarding Paragraph 18, Thompson makes arguments within this Paragraph that could liberally be construed as a claim that Judge Swenski erred by imposing an order against Thompson that he pay Yuliia's attorney's fees. This argument and claim could be made on direct appeal from any order issued against Thompson. To the extent that this Court determines that the arguments within Paragraph 18 are allegations, Judge Swenski denies any such allegations, including but not limited to, any conspiracy to retaliate against him.

34. Numbered paragraph 8 of the Response reads:

> Regarding Paragraph 21, Thompson makes no allegations within this Paragraph but takes issue with Judge Swenski's remarks urging him to comply with Judge Swenski's previous court orders. To the extent that this Court determines that the arguments within Paragraph 21 are allegations, Judge Swenski denies any such allegations.

35. Numbered paragraph 9 of the Response reads:

> Regarding Paragraph 22, Thompson makes no allegations within this Paragraph but makes a vague reference that, as best as can be discerned, attempts to contest a purported evidentiary ruling made by Judge Swenski. To the extent that this Court determines that the arguments within Paragraph 22 are allegations, Judge Swenski denies any such allegations. Judge Swenski has never spoken with the North Ridgeville Police Department about Mr. Thompson's continued allegations of sexual abuse by his ex-wife. Mr. Thompson has gone to every agency that he can, alleging conspiracies. However, not one law enforcement agency or children services agency or either of the two Guardian ad Litems that heard and/or investigated his allegations have substantiated them. And again, the allegations against his now-ex-wife were made and allegedly occurred PRIOR to Mr. Thompson's agreement that shared parenting was in the child's best interest in September 2020. Mr. Thompson could have appealed the matter on the merits but did not. Instead, Mr. Thompson continues to make unfounded allegations against everyone who has been on his case and worked in any capacity on his case. Judge Swenski has done all that she can and more to assist this Father, who is so clearly frustrated by the system and the laws and various agencies.

36. On September 6, 2023, Respondent Chief Justice Kennedy issued a judgment entry denying the AoD ("the Decision").

37. On page 1, the Decision reads:

> As explained below, Thompson has waived some of the allegations in the affidavit of disqualification by not filing the affidavit as soon as Thompson became aware of the circumstances that he believed supported disqualification. As to the remaining allegations, they are insufficient to support a finding that Judge Swenski lacks impartiality or should be otherwise disqualified. Therefore, the affidavit of disqualification is denied. The case shall proceed before Judge Swenski.

38. On page 5, the Decision reads:

> Thompson alleges that Judge Swenski's behavior has demonstrated that the judge will not be impartial during the contested hearing. Thompson claims that "[a]t every opportunity, Judge Swenski has ruled exactly opposite to the law." Thompson affidavit at ¶ 19.
>
> In support of the allegation that Judge Swenski will not be impartial and open-minded, Thompson first cites some of the judge's comments at the May 13, 2020 settlement

conference. Thompson then points to issues that arose prior to and during the final contested hearing on September 16 and 17 wherein the parties reached an agreement on all issues related to the divorce and custody of the child. For example, Thompson avers that the court held a "secret meeting" on September 8 and that "[t]he basis for Judge Swenski's disqualification is on full display in the September 16, 2020 transcript." *Id*. at ¶ 14, 16. Thompson further claims that during the contested hearing, the judge and Thompson's attorney "coordinated their efforts to deceive" Thompson. *Id*. at ¶ 16. And Thompson asserts that in September 2022, the judge unlawfully ordered him to undergo a psychological evaluation without a hearing and in violation of the civil rules.

39. On page 6, the Decision reads:

In more recent time, Thompson points to the judge's comments during the July 14, 2023 hearing where the judge stated, "What do I have to do to have you meet with my [guardian ad litem]?" Thompson claims that this statement by the judge was proof of the impetus for the guardian ad litem to file the emergency motion to suspend Thompson's parenting time in May. Thompson also claims that the judge's statements at the settlement conference show the judge might have been the reason why the sexual abuse allegations he made against plaintiff were not fully investigated. In addition, Thompson claims that the judge stated that she "will not permit evidence of sexual abuse to be introduced at trial, despite its statutory relevance."

Thompson also criticizes the judge's recent adverse rulings, claiming that the judge improperly granted plaintiff's motion for sanctions and attorney fees, which was "completely unsupported by the evidence." He also asserts that the judge found him in contempt of an "unlawful order" and improperly forced him to pay money to the plaintiff to purge the contempt.

40. The paragraph extending from page 6 to page 7 of the Decision reads:

Judge Swenski filed a response denying any interest in the proceeding, denying any bias or prejudice against Thompson, and denying that the judge should otherwise be disqualified. As to Thompson's specific allegations, the judge states that there was no "secret meeting" on September 8, 2020; rather, a magistrate held an ex parte hearing on the plaintiff's motion for emergency temporary custody in accordance with local rules. The judge also emphasizes that the September 16 and 17 contested hearing ended in the parties' mutual agreement to shared parenting and Thompson never appealed that decision. Judge Swenski denies coordinating with Thompson's former counsel and claims that Thompson has taken many of the court's comments out of context. The judge further states that if Thompson is dissatisfied with the court's orders, including the judge's evidentiary rulings or the order requiring Thompson to pay the plaintiff's attorney fees, Thompson may raise those issues on appeal.

41. Page 7 of the Decision continues and reads:

R.C. 2701.03(A) provides that if a judge of a court of common pleas "allegedly is interested in a proceeding pending before the court, allegedly is related to or has a bias or prejudice

for or against a party to a proceeding pending before the court or a party's counsel, or allegedly otherwise is disqualified to preside in a proceeding pending before the court," then that party or counsel may file an affidavit of disqualification with the clerk of this court. Granting or denying the affidavit of disqualification turns on whether the chief justice determines that the allegations of interest, bias, prejudice, or disqualification alleged in the affidavit exist. R.C. 2701.03(E).

42. On page 8, the Decision reads:

In affidavit-of-disqualification proceedings, the burden falls on the affiant to submit "specific allegations on which the claim of interest, bias, prejudice or disqualification is based and the facts to support each of those allegations." R.C. 2701.03(B)(1). Therefore, "[a]n affidavit must describe with specificity and particularity those facts alleged to support the claim of bias or prejudice." *Jn re Disqualification of Mitrovich*, 101 Ohio St.3d 1214, 2003-Ohio-7358, 803 N.E.2d 816, ¶4. Vague and unsubstantiated allegations "are insufficient on their face for a finding of bias or prejudice." *In re Disqualification of Walker*, 36 Ohio St.3d 606, 522 N.E.2d 460 (1988).

"The 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, 132 N.E.2d 191 (1956), paragraph four of the syllabus.

43. The paragraph extending from page 8 to page 9 of the Decision reads:

A judge is accorded a "presumption of impartiality" in an affidavit-of-disqualification proceeding. *In re Disqualification of Celebrezze*, 101 Ohio St.3d 1224, 2003-Ohio-7352, 803 N.E.2d 823, ¶ 7. "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." *Jn re Disqualification of Lewis*, 117 Ohio St.3d 1227, 2004-Ohio-7359, 884 N.E.2d 1082, ¶ 8.

44. Page 9 of the Decision continues and reads:

In addition, "[i]t 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 Dezso*, 134 Ohio St.3d 1223, 2011-Ohio-7081, 982 N.E.2d 714, ¶ 6. "The affiant has the burden to demonstrate that the affidavit is timely filed." *Jn re Disqualification of Froelich, Donovan, & Welbaum*, 143 Ohio St.3d 1266, 2015-Ohio-3423, 39 N.E.3d 522, ¶ 5. "A party may be considered to have waived its objection to the judge when the objection is not raised in a timely fashion and the facts underlying the objection have been known to the party for some time." *In re Disqualification of O'Grady*, 77 Ohio St.3d 1240, 1241,

674 N.E.2d 353 (1996). "Waiver serves as an independent ground to deny an affidavit of disqualification." *In re Disqualification of Winkler*, 170 Ohio St.3d 1253, 2023-Ohio-698, 211 N.E.3d 142, ¶ 1.

45. On page 10, the Decision reads:

Thompson alleges that Judge Swenski should be disqualified because the judge will not be impartial and open-minded during the final contested hearing.

A preliminary issue, however, is whether Thompson acted with the requisite speed and diligence in filing the affidavit of disqualification. As set forth above, if Thompson failed to file the affidavit of disqualification in a timely manner, Thompson waived the right to seek Judge Swenski's disqualification and there is no need to address the merits of any argument that has been waived.

"Whether a litigant or counsel has filed an affidavit of disqualification in a timely manner is a question of reasonableness and depends on the facts of each case. Therefore, whether an affiant has waived his or her right to seek disqualification is decided on a case-by-case basis." *Winkler* at ¶ 9.

Except for statements by Judge Swenski at the July 14, 2023 hearing and the judge's recent rulings, Thompson's affidavit of disqualification relies on statements or actions that the judge made or took in May 2020, September 2021—prior to and during the hearing resolving the divorce case—and September 2022, when the judge ordered both parties to submit to a psychological evaluation.

46. The paragraph extending from page 10 to page 11 of the Decision reads:

As set forth above, "[t]he affiant has the burden to demonstrate that the affidavit is timely filed." *Froelich, Donovan, & Welbaum*, 143 Ohio St.3d 1266, 2015-Ohio-3423, 39 N.E.3d 522, ¶ 5. When a litigant believes that a judge lacks impartiality or an open mind, "he or she must promptly file an affidavit of disqualification. Litigants and counsel alike must act with requisite speed when raising issues of interest, bias, or prejudice or other claims of disqualification and file affidavits of disqualification at the earliest possible time." *Winkler*, 170 Ohio St.3d 1253, 2023-Ohio-698, 211 N.E.3d 142, at ¶ 36.

47. Page 11 of the Decision continues and reads:

Thompson has not offered any explanation for why he waited until August 7, 2023, to file an affidavit of disqualification challenging the judge's conduct from May and September 2021 and September 2022. If Thompson believed that the judge's conduct demonstrated partiality or required disqualification, Thompson should have filed the affidavit of disqualification as soon as possible. Thompson has waived any argument that Judge Swenski's conduct during or before September 2022 supports a finding that the judge lacks impartiality or should otherwise be disqualified.

48. The paragraph extending from page 11 to page 12 of the Decision reads:

Turning to Thompson's claims relating to the judge's more recent conduct, Thompson points to the judge's question, "What do I have to do to have you meet with my [guardian ad litem]?" during the July 14, 2023 hearing as evidence that the judge lacks impartiality or an open mind. This argument is without merit. The judge has ordered both parties to meet with the guardian ad litem. The guardian ad litem was appointed by the court to help assist the court in determining what is in the best interest of the child. The judge's urging Thompson to comply with the court's order is not evidence that the judge lacks neutrality in hearing the pending custody matter.

49. Page 12 of the Decision continues and reads:

Further, "the issue before the chief justice in disqualification proceedings is a narrow one" and " 'limited to determining whether a judge in a pending case has a bias, prejudice, or other disqualifying interest that mandates the judge's disqualification from that case.' " *In re Disqualification of Burge*, 142 Ohio St.3d 57, 2014-Ohio-5871, 28 N.E.3d 48, ¶ 4, quoting *In re Disqualification of Kate*, 88 Ohio St.3d 1208, 1209-1210, 723 N.E.2d 1089 (1999). An affidavit of disqualification "is not a vehicle to contest matters of substantive or procedural law." *In re Disqualification of Solovan*, 100 Ohio St.3d 1214, 2003-Ohio-5484, 798 N.E.2d 3, ¶ 4.

50. The paragraph extending from page 12 to page 13 of the Decision reads:

Therefore, "[i]t is outside the scope of this matter to determine whether [a judge] should have held a plaintiff in contempt or to review the judge's custody decisions." *In re Disqualification of Giulitto*, 166 Ohio St.3d 1233, 2022-Ohio-749, 185 N.E.3d 1130, ¶ 5. It is also "outside the scope of [an affidavit-of-disqualification] proceeding to second-guess how a trial judge manages his [or her] docket or to determine whether the judge has complied with the civil rules." *In re Disqualification of Reece*, 163 Ohio St.3d 1285, 2021-Ohio-1751, 170 N.E.3d 912, ¶ 5. And an affidavit of disqualification "is not the proper forum in which to * * * review a judge's evidentiary rulings." *In re Disqualification of O'Grady*, 170 Ohio St.3d 1201, 2022-Ohio-2854, 209 N.E.3d 725, ¶ 10.

51. Page 13 of the Decision continues and reads:

Accordingly, this is not the appropriate forum to determine whether Judge Swenski properly ordered Thompson to pay attorney fees as a sanction under Civ.R. 11 or whether the court properly held Thompson in contempt of court for failing to comply with a prior court order. And it is outside the scope of this matter to determine whether Judge Swenski erred by informing Thompson that the court would not permit evidence of the plaintiff's alleged sexual abuse during the upcoming hearing. "The matters complained of here fall within the discretion of the judge in a custody case, and it is not the chief justice's role in deciding an affidavit of disqualification to second-guess such decisions." *In re Disqualification of Goldberg*, 165 Ohio St.3d 1285, 2021-Ohio-3628, 180 N.E.3d 1185, ¶ 4.

Therefore this claim is without merit.

> For the reasons explained above, the affidavit of disqualification is denied. The case may proceed before Judge Swenski.

52. Chief Justice Kennedy did not perform her Constitutional duty to "[rule] on the affidavit pursuant to division (E) of [R.C. §2701.03]". R.C. §2701.03(D)(1). This duty is imposed upon Chief Justice Kennedy by Article IV Section 5(C) and Article IV Section 18 of the Ohio Constitution and R.C. §2701.03.

53. Relator has a clear legal right that the Chief Justice "determines that the interest, bias, prejudice, or disqualification alleged in the affidavit" does or does not exist "pursuant to division (E) of " R.C. §2701.03 and issues an entry accordingly pursuant to R.C. §2701.03(E).

54. Relator lacks an adequate remedy in the ordinary course of the law.

55. Exhibit 1, Judge Swenski's Response dated August 28, 2023, is attached and incorporated by reference to this Complaint as if fully rewritten herein.

56. Exhibit 2, Chief Justice Kennedy's Decision dated September 6, 2023, is attached and incorporated by reference to this Complaint as if fully rewritten herein.

57. Exhibit 3, Relator's Affidavit of Disqualification filed August 7, 2023, is attached and incorporated by reference to this Complaint as if fully rewritten herein.

V. Law and Legal Basis for Writ

To be entitled to a writ of mandamus, Relator must prove by clear and convincing evidence that he has a clear legal right to the requested relief, that the Respondent has a clear legal duty to provide the relief, and that Relator lacks an adequate remedy in the ordinary course of the law. See *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶6, 13.

Respondent has a clear legal duty to provide the relief

An Affidavit of Disqualification proceeding is not a judicial proceeding carried out by the Supreme Court, but a Constitutionally-mandated, statutorily-defined set of ministerial duties to be carried out by the judicial officers to whom the duties are assigned. Article IV Section 5(C) provides the constitutional authority for these proceedings as follows:

> The chief justice of the Supreme Court or any judge of that court designated by him shall pass upon the disqualification of any judge of the courts of appeals or courts of common pleas or division thereof. Rules may be adopted to provide for the hearing of disqualification matters involving judges of courts established by law.

In her Decision, Chief Justice Kennedy cited *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956) which provides some relevant historical perspective. As quoted in *Weygandt* at 465, a prior version of R.C. §2701.03 provided:

> "When a judge of the Court of Common Pleas is interested in a cause or matter pending before the court, is related to, or has a bias or prejudice either for or against, a party to such matter or cause or to his counsel, or is otherwise disqualified to sit in such cause or matter, on the filing of an affidavit by any party to such cause or matter, or by the counsel of any party, setting forth the fact of such interest, bias, prejudice, or disqualification, the Clerk of the Court of Common Pleas shall enter the fact of such filing on the trial docket in such cause and forthwith notify the Chief Justice of the Supreme Court. The Chief Justice shall designate and assign some other judge to take the place of the judge against whom such affidavit is filed. The judge so assigned shall try such matter or cause. Such affidavit shall be filed not less than three days prior to the time set for the hearing in such matter or cause."

The prior statutory procedure implementing the Chief Justice's duty required the affidavit to be filed in the court of common pleas. The clerk of that court of common pleas would then "notify" the Chief Justice. Back then, the mere filing of the affidavit caused a judge's removal from a case. It is clear that Article IV Section 5(C) of the Ohio Constitution imposes a duty upon the Chief Justice and this proceeding has nothing to do with the Supreme Court of Ohio. It is a duty imposed upon an officer of that Court, not the Court itself.

This prior procedure presumed the "fact of such interest, bias, prejudice, or disqualification" and immediately removed the judge, demonstrating that this was an exercise of the right of the party to an impartial tribunal. The current procedure simply no longer assumes

the claim in the affidavit to exist, but imposes the duty upon the Chief Justice to make that factual determination as the due course of law guaranteed by Article I Section 16 of the Ohio Constitution. The *Weygandt* decision also discusses R.C. §141.08, which provides for expenses of the Chief Justice in determining the disqualification of common pleas court judges and that statute is still effective. This indicates there may have been some travel involved in the Chief Justice's duty to make this factual determination, but moreover, these expenses are authorized specifically for affidavit of disqualification cases, indicating they are additional ministerial duties imposed upon the Chief Justice for which authorization for expenses must be separately authorized.

The Ohio Constitution distinguishes between the jurisdiction of the Supreme Court and the jurisdiction of the several Justices of the Supreme Court in Article IV Sections 2 and 18, respectively. Article IV Section 1 only vests "the judicial power of the state" in courts, not judges. Article IV Section 18 of the Ohio Constitution provides separate jurisdiction to judges of the various courts to act "as may be directed by law" which is only necessary because they are assigned duties as judicial officers beyond judicial proceedings of the courts over which they preside, *e.g.* to pass upon disqualification of judges of common pleas courts:

> The several Judges of the supreme court, of the common pleas, and of such other courts as may be created, shall, respectively, have and exercise such power and jurisdiction, at chambers, or otherwise, as may be directed by law.

This Court has clarified the difference between ministerial duties and judicial acts in a case involving the issuance of an arrest warrant, which is a ministerial act also. In 1872, this Court decided *Place v. Taylor*, 22 Ohio St. 317, holding:

> A justice of the peace acts in both a judicial and a ministerial capacity. The manner of discharging his judicial duties is left to his own judgment; but, in general, the acts which he is required to perform in a particular way, and as to which he has no discretion about the manner of their performance, are of a ministerial character. In regard to the issuing of an order of arrest everything to be done is specifically defined by the statute. Nothing is

> left to the discretion of the justice; he must proceed in a specified manner. He acts in the same capacity that he does in issuing an execution after judgment. All these acts are such as, in the Court of Common Pleas, are performed by the clerk of the court, and are not dependent on the exercise of judicial discretion; but are such as a party may demand to have done as of right. They are, therefore, ministerial acts. Id. At 322.

The currently effective R.C. §2701.03 provides explicit language that the Chief Justice's duty is defined in R.C. §2701.03(E). Division (D)(1) not only states that the affidavit deprives the judge of authority "until the chief justice *** rules on the affidavit pursuant to division (E) of this section", but also relates the duties of the clerk of the supreme court for the acceptance of the affidavit for filing "under divisions (B) and (C) of this section". Division (D)(4) explicitly removes the deprivation of authority for the judge, but only under the condition that a prior affidavit is denied "pursuant to division (E) of this section". Division (D)(4) also reiterates the clerk's duty in acceptance of the affidavit for filing as "under divisions (B) and (C) of this section".

R.C. §2701.03(E) provides:

> If the clerk of the supreme court accepts an affidavit of disqualification for filing under divisions (B) and (C) of this section and if the chief justice of the supreme court, or any justice of the supreme court designated by the chief justice, determines that the interest, bias, prejudice, or disqualification alleged in the affidavit does not exist, the chief justice or the designated justice shall issue an entry denying the affidavit of disqualification. If the chief justice of the supreme court, or any justice of the supreme court designated by the chief justice, determines that the interest, bias, prejudice, or disqualification alleged in the affidavit exists, the chief justice or the designated justice shall issue an entry that disqualifies that judge from presiding in the proceeding and either order that the proceeding be assigned to another judge of the court of which the disqualified judge is a member pursuant to the court's random assignment process, to a judge of another court, or to a retired judge.

As directed by law, *i.e.* R.C. §2701.03(E), the Chief Justice either "shall issue an entry denying the affidavit of disqualification" or "shall issue an entry that disqualifies that judge from presiding in the proceeding ***" and reassign the proceeding to another judge meeting one of the three explicit criteria. The Chief Justice must determine whether "the interest, bias, prejudice, or

disqualification alleged in the affidavit exists" or not. "An act is none the less ministerial, because the person performing it may have to satisfy himself of certain facts before his duty can be performed." *Molitor v. State* (1892), 6 Ohio C.C. 263, (affirmed Ohio Supreme Court 29 Weekly Law Bulletin 152), 265. The required determination is not an exercise of judicial discretion, but a factual determination, much like those made by juries comprised of neutral laypersons who make factual determinations based on jury instructions explaining the law. The quoted *Weygandt* language citing a previous R.C. §2701.03, "setting forth the fact of such interest, bias, prejudice, or disqualification", evidences that the Chief Justice's duty is a "factual" determination. Accordingly, the law, or guidance, upon which the Chief Justice's factual determination is to be made can be found in the Ohio Code of Judicial Conduct, which provides numerous rules pertaining to "interest, bias, prejudice, or disqualification" for other reasons. It is not a coincidence that violations of these rules are dealt with under the exclusive authority of the Supreme Court and Article IV Section 5(C) limits who "shall pass upon disqualification of any judge of the *** courts of common pleas" to Justices of the Supreme Court.

Respondent Chief Justice Kennedy did not rule pursuant to R.C. §2701.03(E) as required

As a preliminary issue, the explicit language of R.C. §2701.03 must be analyzed, because it provides the explicit procedures for Chief Justice Kennedy's duty to be carried out as "directed by law" pursuant to Article IV Section 18 of the Ohio Constitution.

First, pursuant to R.C. §2701.03, the contents of an affidavit of disqualification are separately distinguishable in three categories as: 1) a claim of alleged "interest, bias, prejudice, or disqualification" which is consistently stated in the singular form, 2) allegations, which is consistently stated in the plural form, upon which the claim is based, and 3) facts, which is

consistently stated in the plural form, to support each of those allegations. R.C. §2701.03(A) provides:

> If a judge of the court of common pleas allegedly is interested in a proceeding pending before the court, allegedly is related to or has a bias or prejudice for or against a party to a proceeding pending before the court or a party's counsel, or allegedly otherwise is disqualified to preside in a proceeding pending before the court, any party to the proceeding or the party's counsel may file an affidavit of disqualification with the clerk of the supreme court in accordance with division (B) of this section.

R.C. §2701.03(B)(1) distinguishes between the singular claim and the plural allegations and plural facts:

> The specific allegations on which the claim of interest, bias, prejudice, or disqualification is based and the facts to support each of those allegations ***

R.C. §2701.03(E), quoted above, explicitly mandates that Chief Justice Kennedy determines whether the singular claim of "interest, bias, prejudice, or disqualification alleged in the affidavit exists", not whether each and every allegation upon which the claim is based exists and is independently sufficient to disqualify.

Second, the duties imposed upon a Chief Justice cannot be waived by that Chief Justice or any prior Chief Justice. Two explicit provisions of the Ohio Constitution (Article IV Sections 5(C) and 18) as well as R.C. §2701.03 mandate a duty to be carried out by the Chief Justice without any mention of a waiver, other than precedent of prior Chief Justices' apparent dereliction of duty. Obviously, *stare decisis* is important, however, does it apply when judges and justices make factual determinations in carrying out their ministerial duties ? When factual determinations are made regarding arrest warrants or search warrants, both ministerial duties, do those officers review case precedent before issuing the warrant ? The Decision is titled "Judgment Entry and Decision", but is it a judgment ? This Court has previously ruled, in *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 134 Ohio St. 3d 13, 2012-Ohio-5017, on the applicability of Article IV Section 2(A) of the Ohio Constitution:

> However, four justices declined to join that portion of the opinion, and therefore it is not a holding of this court. See Ohio Constitution, Article IV, Section 2(A) ("A majority of the supreme court shall be necessary to constitute a quorum or to render a judgment").

Further, R.C. §2701.03(E) explicitly directs that the Chief Justice either "shall issue an entry denying the affidavit of disqualification ***" or "shall issue an entry that disqualifies that judge from presiding in the proceeding ***". This language is distinguishable from S.Ct.Prac.R. 18.01, which uses the term "judgment entry" three times in its one paragraph. Further, a valid judgment can only be rendered by a court exercising jurisdiction over a justiciable matter. The procedures set forth in R.C. §2701.03 do not set forth a justiciable matter for a court, but ministerial duties to be carried out by the clerk of the supreme court and the Chief Justice or another designated Justice. Thus, there is no authority for any chief justice to enter a judgment in an affidavit of disqualification matter, which would violate Article IV Section 2(A) as cited above, and there is no legal authority for Chief Justices to waive the duties Constitutionally-imposed upon them.

Third, even if a Chief Justice could decide to self-absolve of Constitutional duties, all language relating to timeliness is contained within divisions (B) and (C) of R.C. §2701.03, which are the procedures for the clerk of the Supreme Court's determination of whether to accept the affidavit for filing. R.C. §2701.03(B) requires that the affidavit "shall be filed with the clerk of the supreme court not less than seven calendar days" before the next hearing. R.C. §2701.03(B)(4) requires the affidavit to state the "date of the next schedule hearing" so that the clerk can make this determination. R.C. §2701.03(C)(1)(c)(2) mandates that the "clerk of the supreme court shall not accept an affidavit of disqualification presented for filing under division (B) of this section if it is not presented for filing***." Finally, as quoted above, R.C. §2701.03(E) is conditioned upon the prior acceptance for filing of the affidavit of disqualification. The only legally authorized timeliness determination has already been made by

the only officer authorized to make that determination before the Chief Justice's duty begins and that duty is to make a factual determination of whether the singular claim of interest, bias, prejudice, or disqualification exists and to issue an entry accordingly. R.C. §2701.03(E) contains the entirety of the Chief Justice's duties and that provision makes no mention whatsoever of the "allegations" upon which the claim is based or the "facts" supporting those allegations, but only the alleged "claim", which is the entirety of the affidavit.

Determination Whether the Alleged Claim of Interest, Bias, Prejudice, or Disqualification Exists

Obviously, the Ohio Code of Judicial Conduct is the reference source for this determination. However, since the Decision cites more "case law" than Canons and Rules, this topic merits discussion. As stated earlier, R.C. §2701.03(E), quoted above, explicitly mandates that Chief Justice Kennedy determines whether the singular claim of "interest, bias, prejudice, or disqualification alleged in the affidavit exists", not whether each and every allegation upon which the claim is based exists or is independently sufficient to disqualify. Yet, the Chief Justice's Decision cites reasons to disregard individual allegations, which is not "pursuant to [R.C. §2701.03(E)]".

As stated in the Facts section above, on pages 12-13 of the Decision, Chief Justice Kennedy cites *Solovon* to support the proposition that all actions taken by Judge Swenski contrary to law are not to be considered, because an AoD "is not a vehicle to contest matters of substantive or procedural law". The Decision cites *Giulitto* and *Reece* to support the contention that disobedience of civil rules are "outside the scope of [an affidavit-of-disqualification] proceeding". The Decision cites *O'Grady* to support the contention that an affidavit of disqualification "is not the proper forum in which to *** review a judge's evidentiary rulings." The Decision cites *Goldberg* to support the contention that matters "within the discretion of the

judge in a custody case *** is not the chief justice's role in deciding an affidavit of disqualification to second-guess such decisions."

The following Rules, perhaps others as well, are relevant to whether errors of law might constitute impartiality or the appearance of impropriety.

> A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety. Rule 1.2.
>
> Actual improprieties include violations of law, court rules, or provisions of this code. The test for appearance of impropriety is an objective standard that focuses on whether the conduct would create, in reasonable minds, a perception that the judge violated this code, engaged in conduct that is prejudicial to public confidence in the judiciary, or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge. Rule 1.2, Comment 5.
>
> A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially. Rule 2.2.
>
> When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this rule. Rule 2.2, Comment 3.

Justices of this Court know more than anyone, that these determinations are highly fact-based and situational. The specific allegations on which the claim of interest, bias, prejudice, or disqualification is based and the facts to support each of these allegations which were included in the affidavit are quoted in the Facts section above. Although the purpose of this complaint in mandamus is not to argue the claim that Judge Swenski should be disqualified, the distinction between considering the affidavit as a whole, as directed by R.C. §2701.03(E), and how Chief Justice Kennedy reasoned her Decision, pursuant to the precedent of prior Chief Justices, demonstrates the importance of the context of the entire affidavit in considering an individual ruling or statement made by Judge Swenski. The context of the entire affidavit may very well indicate bad faith in a particular ruling or statement, in violation of Rule 2.2 quoted above,

whereas such bad faith is ignored when applying the above-cited cases, deviating from R.C. §2701.03(E).

Relator has a clear legal right to the requested relief

Relator has a right to litigate his case in the Lorain County Court of Common Pleas before a fair tribunal. Article I Section 16 of the Ohio Constitution provides:

> All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

Due course of law is also known as due process. "A fair trial in a fair tribunal is a basic requirement of due process." *State ex rel. Dayton Newspapers v. Phillips* (1976), 46 Ohio St. 2d 457, 504, citing *In re Murchison* (1955), 349 U.S. 133, 136. A presiding judge with a disqualifying issue represents a denial of this right. R.C. §2701.03(A) grants Relator the ability to exercise the same right, *i.e.* Article I Section 16 of the Ohio Constitution, to seek remedy for this claimed denial of due process in the common pleas court by filing an affidavit pursuant to that statute, which prescribes the "due course of law" applicable to this situation. R.C. §2701.03(A) provides:

> If a judge of the court of common pleas allegedly is interested in a proceeding pending before the court, alleged is related to or has a bias or prejudice for or against a party to a proceeding pending before the court or a party's counsel, or allegedly otherwise is disqualified to preside in a proceeding pending before the court, any party to the proceeding or the party's counsel may file an affidavit of disqualification with the clerk of the supreme court in accordance with division (B) of this section.

The remedy guaranteed by Article I Section 16 of the Ohio Constitution is for the Chief Justice, or other designated Justice, to make the factual determination whether claim of interest, bias, prejudice, or disqualification alleged in the affidavit exists and if so, remove the impediment to the litigant's right to seek remedy by due course of law in the underlying proceeding by issuing the entry pursuant to R.C. §2701.03(E) accordingly.

The ability to invoke this duty is only available to current litigants and their counsel because the procedure is specifically purposed to provide redress for a grievance which can only exist during pending litigation. The specific requirements to be alleged in the affidavit are limited to those conditions which would infringe upon a litigant's rights pursuant to Article I Section 16 of the Ohio Constitution – an unbiased tribunal.

Relator lacks an adequate remedy in the ordinary course of the law

The Ohio Constitution grants exclusive authority to the Chief Justice of the Supreme Court of Ohio, or any Justice of this Court designated by the Chief Justice, to pass upon the disqualification of any judge of the courts of appeals or courts of common pleas. R.C. §2701.03, specifically Division (E) of that section, prescribes ministerial duties, which are not appealable, but subject to an action in mandamus as appropriate. No court has jurisdiction to appeal a determination made by the Chief Justice or her designee pursuant to R.C. §2701.03.

VI. Prayer for Relief

Relator seeks relief in a writ of mandamus ordering Honorable Chief Justice Kennedy to comply with the mandated procedure set forth in R.C. §2701.03(E) regarding the Affidavit of Disqualification filed in Case #23-AP-116.

Respectfully Submitted,

/s/ Matthew A. Thompson

Matthew A. Thompson
Relator, Pro Se
37068 Sandy Ridge Drive
North Ridgeville, Ohio 44039
(440) 412-7074

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO, ex rel. MATTHEW A. THOMPSON Address: 37068 Sandy Ridge Drive North Ridgeville, Ohio 44039 Relator, v. **THE HONORABLE CHIEF JUSTICE OF THE SUPREME COURT OF OHIO SHARON L. KENNEDY** Address: 65 South Front Street Columbus, Ohio 43215-3431 Respondent,	**CASE NO:** **ORIGINAL ACTION - WRIT OF MANDAMUS** **COMPLAINT FOR WRIT OF MANDAMUS**

AFFIDAVIT OF VERITY

State of Ohio)
) SS:
County of Lorain)

MATTHEW A. THOMPSON, Relator, being duly sworn states as follows:

1. That I am of sound mind and memory and that I am over the age of eighteen years old.

2. That the allegations contained in the foregoing complaint are true and accurate as I verily believe.

3. That the recited facts contained in the foregoing complaint are based upon my personal knowledge.

4. That the records referred to herein, and the records incorporated herein by reference, are true and accurate as known to me.

5. AFFIANT FURTHER SAYETH NAUGHT.

RELATOR, MATTHEW A. THOMPSON

Sworn to and subscribed before me this 11th day of September, 2023.

NOTARY PUBLIC

JESSICA HOWARD - NOTARY PUBLIC
COMM EXP: AUG 8, 2027
STATE OF OHIO

IN THE SUPREME COURT OF OHIO

In re Disqualification of Hon. Lisa Swenski	)	Case No. 23-AP-116
	)	The Hon. Lisa Swenski's Response to Affidavit of Disqualification in Yuliia Thompson v. Matthew Thompson Lorain County Court of Common Pleas, Domestic Relations and Juvenile Division, Case No. 19DU085588

THE HONORABLE JUDGE LISA SWENSKI'S RESPONSE TO MATTHEW THOMPSON'S AFFIDAVIT OF DISQUALIFICATION

As an initial matter, Affiant, Matthew Thompson ("Thompson") has presented no allegations within his Affidavit of Disqualification on which a claim of (1) interest, (2) bias, (3) prejudice, or (4) disqualification could be based upon against the Hon. Lisa Swenski ("Judge Swenski") pursuant to S.Ct.Prac.R. 21.01(C)(2). Most, if not nearly all the 22 Paragraphs included in Thompson's Affidavit consist of arguments, not allegations, that could have been brought forth on a direct appeal rather than through an affidavit of disqualification. Much of the rest of his Paragraphs either misunderstand the law and rules of evidence and procedure or willingly mischaracterize the Judge's actions (as evidenced by a clear reading of the transcripts that Mr. Thompson himself provides as exhibits) or continue Mr. Thompson's history of making unfounded or unsupported accusations of conspiracies against him by his attorneys, other attorneys, and others.

EXHIBIT 1

In fact much of Mr. Thompson's complaints center on his divorce proceedings from September 16, 2020 and September 17, 2020 which ended with his agreement that Shared Parenting was in his son's best interests. He had the ability to litigate the final Judgment Entry of Divorce with the 9th District Court of Appeals back then, however, he chose not to do so. (Mr. Thompson would, however, ask for a stay in his post-decree contempt proceedings in 2023 in order to appeal to the 9th District Court of Appeals wherein he made a legally invalid argument regarding Marsy's Law that was inapplicable on its face. The 9th dismissed the appeal.)

To the extent that this Court determines that the arguments put forth by Thompson are allegations which would necessitate a response pursuant to S.Ct.Prac.R. 21.02(B), Judge Swenski provides the responses, below, to the individual arguments presented within the 22 Paragraphs listed in Thompson's Affidavit.

1. Regarding Paragraphs 1-7, 9-10, 12-14, and 19-20, there are no discernible allegations which pertain to any (1), interest, (2) bias, (3) prejudice, or (4) disqualification against Judge Swenski. Thompson has brought forth arguments in these Paragraphs which, as best as can be determined, appear to take issue with the merits of the case and therefore could have been brought forth on a direct appeal. To the extent that this Court interprets any of Thompson's arguments as allegations necessitating a response, Judge Swenski denies the allegations in Paragraphs 1-7, 9-10, 12-14, and 19-20.
2. Regarding Paragraph 11, Judge Swenski was informed by counsel that Thompson had been calling U.S. Immigration and Customs Enforcement to have Yuliia Thompson deported back to Ukraine. Mr. Thompson had a documented history of

first wanting his wife NOT deported, then wanting and taking an active role in getting her deported --- as previously reported by counsel and the GAL --- during the divorce case himself. Judge Swenski's laborious and many explanations of what that might do to Mr. Thompson's ability to parent his child or have access to his child are mischaracterized here by Mr. Thompson as a threat to him for contacting INS (which is his right), when in fact it was a statement of what would most likely happen if his wife had sole custody and was deported to Ukraine. Mr. Thompson's own exhibits to his ADQ (the multiple transcripts) contain numerous ad nauseum explanations by the trial Court as to what could happen if she were deported during the case and had emergency temporary custody or sole custody. Additionally, to Judge Swenski's memory, all counsel had asked Judge Swenski to specifically address Mr. Thompson that it was not in his best interests if she were deported, and it was certainly not in the child's best interests.

3. Regarding Paragraph 14, there was no "secret meeting" on September 8, 2020; it was an Ex-Parte Emergency Temporary Custody hearing conducted in accordance with local rules and heard by Magistrate Blake. There was not and never has been any coordination between Judge Swenski and any police department regarding a "shutdown" of an investigation into sexual abuse.
4. Regarding Paragraph 15, Yuliia filed a motion for an Emergency Temporary Custody in September 2019 which was granted. Thereafter, the parties mutually agreed to settle the issues within the ETC by way of an agreed judgment entry of Shared Parenting and final divorce decree. A process that took counsel two full court days. Any remarks made by Judge Swenski pertained to how, by operation

of law, the ETC was dissolved, and the agreed judgment entry that included Shared Parenting was controlling. Therefore, Mr. Thompson's ETC was moot, as – by law --- he had already testified under oath on September 16, 2020 that the Shared Parenting Plan was in his child's best interests. Mr. Thompson would again testify to same – again under oath --- the very next day when the rest of the divorce was resolved and concluded.

5. Regarding Paragraph 16, Thompson presents arguments within this Paragraph that could liberally be construed as arguments in support of a claim of ineffective assistance of counsel against Thompson's counsel. To the extent that this Court determines that the arguments within Paragraph 16 are allegations, Judge Swenski denies any such allegations. Again, Mr. Thompson sometimes sees illicit coordination and conspiracy when the Judge does all that she can to be transparent and put everything on the record. The "weird twist and turn" statement made by Judge Swenski that Mr. Thompson misconstrues was in reference to a request by counsel that she talk with Mr. Thompson's parents who were both in the courtroom as support for him. (Something that Judge Swenski did as evidenced in the transcript.) Counsel believed that Mr. Thompson was not understanding what was happening and refusing to believe what the law allows in a sole custody vs. shared parenting plan. Indeed, Judge Swenski's memory is that Mr. Thompson's own attorney suggested that he may have a conflict with his client. Thompson's reference to the Judge's comment regarding "this very unusual maneuver" was again a reference to engaging in a dialogue with Mr. Thompson's parents. Finally, with reference to Judge Swenski stating that "I have to kind of hold

my nose and say, okay. I'll accept this agreement that I normally wouldn't accept, but because it suits both of their purposes and the child, because otherwise, I'm looking at sole custody to her" was accurate and transparent: Judge Swenski believed that the child's best interests would be to have both Mother and Father in the child's life and that would be less likely if Mother were deported to Ukraine while she had sole custody, therefore, she was willing to accept and approve the Shared Parenting Plan despite her misgivings.

6. Regarding Paragraph 17, Judge Swenski was responding to discussion regarding Mother's domestic violence conviction, which had been argued in open court had major problems. It apparently would also cause Mother major problems including deportation. Indeed, Judge Swenski mentions the word immigration many times that day in her voluminous explanations to Mr. Thompson's parents, to Defendant Mr. Thompson, to Plaintiff Mrs. Thompson, and to all counsel and the GAL. "If there's something else I can do" is again misconstruing Judge Swenski's offer to assist the parents and counsel and the GAL in, for example, expediting paperwork (as Judge Swenski had just granted Shared Parenting to Mother despite Mother's reportedly questionable Domestic Violence conviction) or anything else. Again, it was to effect Judge Swenski's Shared Parenting decree and her belief that having the child present in the United States and available to both parents was in the child's best interests. It was clear to anyone in the courtroom, except apparently Mr. Thompson, that Judge Swenski was again trying to have her Court order followed.

7. Regarding Paragraph 18, Thompson makes arguments within this Paragraph that could liberally be construed as a claim that Judge Swenski erred by imposing an order against Thompson that he pay Yuliia's attorney's fees. This argument and claim could be made on direct appeal from any order issued against Thompson. To the extent that this Court determines that the arguments within Paragraph 18 are allegations, Judge Swenski denies any such allegations, including but not limited to, any conspiracy to retaliate against him.
8. Regarding Paragraph 21, Thompson makes no allegations within this Paragraph but takes issue with Judge Swenski's remarks urging him to comply with Judge Swenski's previous court orders. To the extent that this Court determines that the arguments within Paragraph 21 are allegations, Judge Swenski denies any such allegations.
9. Regarding Paragraph 22, Thompson makes no allegations within this Paragraph but makes a vague reference that, as best as can be discerned, attempts to contest a purported evidentiary ruling made by Judge Swenski. To the extent that this Court determines that the arguments within Paragraph 22 are allegations, Judge Swenski denies any such allegations. Judge Swenski has never spoken with the North Ridgeville Police Department about Mr. Thompson's continued allegations of sexual abuse by his ex-wife. Mr. Thompson has gone to every agency that he can, alleging conspiracies. However, not one law enforcement agency or children services agency or either of the two Guardian ad Litems that heard and/or investigated his allegations have substantiated them. And again, the allegations against his now-ex-wife were made and allegedly occurred PRIOR to Mr.

Thompson's agreement that shared parenting was in the child's best interest in September 2020. Mr. Thompson could have appealed the matter on the merits but did not. Instead, Mr. Thompson continues to make unfounded allegations against everyone who has been on his case and worked in any capacity on his case. Judge Swenski has done all that she can and more to assist this Father, who is so clearly frustrated by the system and the laws and various agencies.

Regards,
J.D. Tomlinson, # 0081769
Lorain County Prosecuting Attorney

/s/ GREG PELTZ

Greg Peltz, # 0091542
Assistant Prosecuting Attorney
Lorain County Prosecutor's Office
Counsel for the Honorable Lisa Swenski

The Supreme Court of Ohio

In re Disqualification of Hon. Lisa Swenski

Supreme Court Case No. 23-AP-116

JUDGMENT ENTRY AND DECISION

ON AFFIDAVIT OF DISQUALIFICATION in *Yuliia Thompson v. Matthew A. Thompson*, Lorain County Court of Common Pleas, Domestic Relations and Juvenile Division, Case No. 19DU085588.

Defendant Matthew Thompson has filed an affidavit of disqualification pursuant to R.C. 2701.03 seeking to disqualify Judge Lisa Swenski of the Lorain County Court of Common Pleas, Domestic Relations and Juvenile Division, from presiding over Thompson's divorce case. Judge Swenski filed a response to the affidavit of disqualification.

As explained below, Thompson has waived some of the allegations in the affidavit of disqualification by not filing the affidavit as soon as Thompson became aware of the circumstances that he believed supported disqualification. As to the remaining allegations, they are insufficient to support a finding that Judge Swenski lacks impartiality or should be otherwise disqualified. Therefore, the affidavit of disqualification is denied. The case shall proceed before Judge Swenski.

Trial-Court Proceedings

EXHIBIT 2

On January 25, 2019, a complaint for divorce was filed in the Lorain County Court of Common Pleas, Domestic Relations Division. An answer and counterclaim for divorce was filed February 4.

On May 13, 2020, Judge Swenski held a settlement conference. On September 8, plaintiff filed a motion for emergency temporary custody of the parties' minor child. On that same date, an order suspending Thompson's parenting time was issued.

On September 16 and 17, the parties appeared for a final contested hearing and ultimately entered into an agreement. The court dismissed the emergency temporary order and entered a shared parenting plan. On September 18, a Judgment Entry and Decree of Divorce with Shared Parenting Plan was granted.

On May 11, 2022, the plaintiff filed a motion to terminate the shared parenting plan. On May 31, Thompson filed a motion for emergency temporary custody. On June 24, a two-hour contested review hearing was scheduled for August 29.

On July 25, due to a conflict, the guardian ad litem was replaced by Christopher Rewak.

On August 23, the plaintiff filed a motion for psychological and psychiatric examination.

The court rescheduled the August 29 review hearing for October 31. On September 1, in consideration of the plaintiff's motion for psychological examination and Thompson's response, the court ordered both parties to submit to a psychological evaluation. The court rescheduled the review hearing for January 12, 2023.

On November 4, 2022, the plaintiff filed a motion for attorney fees, and on November 30, the plaintiff filed a motion for Civ.R. 11 sanctions. On January 10, 2023, the plaintiff filed a motion to show cause.

The January 12 review hearing did not go forward because Thompson had failed to comply with discovery. The court scheduled a settlement conference for July 14 and a final contested trial for August 31. The court later scheduled a hearing on the plaintiff's motion to show cause for June 30.

On May 11, Rewak filed a motion for an ex parte or emergency order, requesting, among other things, that Thompson's parenting time be stayed until Thompson met with the guardian ad litem.

On May 12, a magistrate issued an emergency order suspending Thompson's parenting time until Thompson met with the guardian ad litem. On that same date, Thompson filed a motion to void his parenting-time suspension. Later that same

day, a magistrate denied Thompson's motion. On May 23, the court vacated the ex parte order suspending Thompson's parenting time.

On June 22, Thompson filed a motion to vacate the order appointing the guardian ad litem.

On June 26, the plaintiff renewed her prior motion for Civ.R. 11 sanctions against Thompson and filed another motion for Civ.R. 11 sanctions regarding Thompson's June 22 motion to vacate the order appointing the guardian ad litem.

The court held the scheduled show-cause hearing on June 30. A magistrate found Thompson in contempt of the court's orders and ordered that he may purge his contempt by submitting to a psychological evaluation and by paying $1,000 to the plaintiff's attorney by July 31. If Thompson failed to purge the contempt, the magistrate ordered him to appear for a sentencing hearing on August 23. Judge Swenski adopted the magistrate's decision on July 7.

The court held a pretrial hearing on July 14, during which the parties argued their various motions. On July 21, the magistrate denied Thompson's motion to vacate the order appointing the guardian ad litem and granted the plaintiff's motions for Civ.R. 11 sanctions and attorney fees. On that same date, Judge Swenski adopted the decision of the magistrate and ordered Thompson to pay the plaintiff $4,000 by September 1.

On August 7, Thompson filed an affidavit of disqualification against Judge Swenski.

Affidavit-of-Disqualification Proceedings

Thompson alleges that Judge Swenski's behavior has demonstrated that the judge will not be impartial during the contested hearing. Thompson claims that "[a]t every opportunity, Judge Swenski has ruled exactly opposite to the law." Thompson affidavit at ¶ 19.

In support of the allegation that Judge Swenski will not be impartial and open-minded, Thompson first cites some of the judge's comments at the May 13, 2020 settlement conference. Thompson then points to issues that arose prior to and during the final contested hearing on September 16 and 17 wherein the parties reached an agreement on all issues related to the divorce and custody of the child. For example, Thompson avers that the court held a "secret meeting" on September 8 and that "[t]he basis for Judge Swenski's disqualification is on full display in the September 16, 2020 transcript." *Id.* at ¶ 14, 16. Thompson further claims that during the contested hearing, the judge and Thompson's attorney "coordinated their efforts to deceive" Thompson. *Id.* at ¶ 16. And Thompson asserts that in September 2022, the judge unlawfully ordered him to undergo a psychological evaluation without a hearing and in violation of the civil rules.

In more recent time, Thompson points to the judge's comments during the July 14, 2023 hearing where the judge stated, "What do I have to do to have you meet with my [guardian ad litem]?" Thompson claims that this statement by the judge was proof of the impetus for the guardian ad litem to file the emergency motion to suspend Thompson's parenting time in May. Thompson also claims that the judge's statements at the settlement conference show the judge might have been the reason why the sexual abuse allegations he made against plaintiff were not fully investigated. In addition, Thompson claims that the judge stated that she "will not permit evidence of sexual abuse to be introduced at trial, despite its statutory relevance."

Thompson also criticizes the judge's recent adverse rulings, claiming that the judge improperly granted plaintiff's motion for sanctions and attorney fees, which was "completely unsupported by the evidence." He also asserts that the judge found him in contempt of an "unlawful order" and improperly forced him to pay money to the plaintiff to purge the contempt.

Judge Swenski filed a response denying any interest in the proceeding, denying any bias or prejudice against Thompson, and denying that the judge should otherwise be disqualified. As to Thompson's specific allegations, the judge states that there was no "secret meeting" on September 8, 2020; rather, a magistrate held

an ex parte hearing on the plaintiff's motion for emergency temporary custody in accordance with local rules. The judge also emphasizes that the September 16 and 17 contested hearing ended in the parties' mutual agreement to shared parenting and Thompson never appealed that decision. Judge Swenski denies coordinating with Thompson's former counsel and claims that Thompson has taken many of the court's comments out of context. The judge further states that if Thompson is dissatisfied with the court's orders, including the judge's evidentiary rulings or the order requiring Thompson to pay the plaintiff's attorney fees, Thompson may raise those issues on appeal.

Disqualification of a Common-Pleas-Court Judge

R.C. 2701.03(A) provides that if a judge of a court of common pleas "allegedly is interested in a proceeding pending before the court, allegedly is related to or has a bias or prejudice for or against a party to a proceeding pending before the court or a party's counsel, or allegedly otherwise is disqualified to preside in a proceeding pending before the court," then that party or counsel may file an affidavit of disqualification with the clerk of this court. Granting or denying the affidavit of disqualification turns on whether the chief justice determines that the allegations of interest, bias, prejudice, or disqualification alleged in the affidavit exist. R.C. 2701.03(E).

In affidavit-of-disqualification proceedings, the burden falls on the affiant to submit "specific allegations on which the claim of interest, bias, prejudice or disqualification is based and the facts to support each of those allegations." R.C. 2701.03(B)(1). Therefore, "[a]n affidavit must describe with specificity and particularity those facts alleged to support the claim of bias or prejudice." *In re Disqualification of Mitrovich*, 101 Ohio St.3d 1214, 2003-Ohio-7358, 803 N.E.2d 816, ¶ 4. Vague and unsubstantiated allegations "are insufficient on their face for a finding of bias or prejudice." *In re Disqualification of Walker*, 36 Ohio St.3d 606, 522 N.E.2d 460 (1988).

"The 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, 132 N.E.2d 191 (1956), paragraph four of the syllabus.

A judge is accorded a "presumption of impartiality" in an affidavit-of-disqualification proceeding. *In re Disqualification of Celebrezze*, 101 Ohio St.3d 1224, 2003-Ohio-7352, 803 N.E.2d 823, ¶ 7. "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.

In addition, "[i]t 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 Dezso*, 134 Ohio St.3d 1223, 2011-Ohio-7081, 982 N.E.2d 714, ¶ 6. "The affiant has the burden to demonstrate that the affidavit is timely filed." *In re Disqualification of Froelich, Donovan, & Welbaum*, 143 Ohio St.3d 1266, 2015-Ohio-3423, 39 N.E.3d 522, ¶ 5. "A party may be considered to have waived its objection to the judge when the objection is not raised in a timely fashion and the facts underlying the objection have been known to the party for some time." *In re Disqualification of O'Grady*, 77 Ohio St.3d 1240, 1241, 674 N.E.2d 353 (1996). "Waiver serves as an independent ground to deny an affidavit of disqualification." *In re Disqualification of Winkler*, 170 Ohio St.3d 1253, 2023-Ohio-698, 211 N.E.3d 142, ¶ 1.

Analysis

Thompson alleges that Judge Swenski should be disqualified because the judge will not be impartial and open-minded during the final contested hearing.

A preliminary issue, however, is whether Thompson acted with the requisite speed and diligence in filing the affidavit of disqualification. As set forth above, if Thompson failed to file the affidavit of disqualification in a timely manner, Thompson waived the right to seek Judge Swenski's disqualification and there is no need to address the merits of any argument that has been waived.

"Whether a litigant or counsel has filed an affidavit of disqualification in a timely manner is a question of reasonableness and depends on the facts of each case. Therefore, whether an affiant has waived his or her right to seek disqualification is decided on a case-by-case basis." *Winkler* at ¶ 9.

Except for statements by Judge Swenski at the July 14, 2023 hearing and the judge's recent rulings, Thompson's affidavit of disqualification relies on statements or actions that the judge made or took in May 2020, September 2021—prior to and during the hearing resolving the divorce case—and September 2022, when the judge ordered both parties to submit to a psychological evaluation.

As set forth above, "[t]he affiant has the burden to demonstrate that the affidavit is timely filed." *Froelich, Donovan, & Welbaum*, 143 Ohio St.3d 1266, 2015-Ohio-3423, 39 N.E.3d 522, ¶ 5. When a litigant believes that a judge lacks

impartiality or an open mind, "he or she must promptly file an affidavit of disqualification. Litigants and counsel alike must act with requisite speed when raising issues of interest, bias, or prejudice or other claims of disqualification and file affidavits of disqualification at the earliest possible time." *Winkler*, 170 Ohio St.3d 1253, 2023-Ohio-698, 211 N.E.3d 142, at ¶ 36.

Thompson has not offered any explanation for why he waited until August 7, 2023, to file an affidavit of disqualification challenging the judge's conduct from May and September 2021 and September 2022. If Thompson believed that the judge's conduct demonstrated partiality or required disqualification, Thompson should have filed the affidavit of disqualification as soon as possible. Thompson has waived any argument that Judge Swenski's conduct during or before September 2022 supports a finding that the judge lacks impartiality or should otherwise be disqualified.

Turning to Thompson's claims relating to the judge's more recent conduct, Thompson points to the judge's question, "What do I have to do to have you meet with my [guardian ad litem]?" during the July 14, 2023 hearing as evidence that the judge lacks impartiality or an open mind. This argument is without merit. The judge has ordered both parties to meet with the guardian ad litem. The guardian ad litem was appointed by the court to help assist the court in determining what is in the best

interest of the child. The judge's urging Thompson to comply with the court's order is not evidence that the judge lacks neutrality in hearing the pending custody matter.

Further, "the issue before the chief justice in disqualification proceedings is a narrow one" and " 'limited to determining whether a judge in a pending case has a bias, prejudice, or other disqualifying interest that mandates the judge's disqualification from that case.' " *In re Disqualification of Burge*, 142 Ohio St.3d 57, 2014-Ohio-5871, 28 N.E.3d 48, ¶ 4, quoting *In re Disqualification of Kate*, 88 Ohio St.3d 1208, 1209-1210, 723 N.E.2d 1089 (1999). An affidavit of disqualification "is not a vehicle to contest matters of substantive or procedural law." *In re Disqualification of Solovan*, 100 Ohio St.3d 1214, 2003-Ohio-5484, 798 N.E.2d 3, ¶ 4.

Therefore, "[i]t is outside the scope of this matter to determine whether [a judge] should have held a plaintiff in contempt or to review the judge's custody decisions." *In re Disqualification of Giulitto*, 166 Ohio St.3d 1233, 2022-Ohio-749, 185 N.E.3d 1130, ¶ 5. It is also "outside the scope of [an affidavit-of-disqualification] proceeding to second-guess how a trial judge manages his [or her] docket or to determine whether the judge has complied with the civil rules." *In re Disqualification of Reece*, 163 Ohio St.3d 1285, 2021-Ohio-1751, 170 N.E.3d 912, ¶ 5. And an affidavit of disqualification "is not the proper forum in which to * * *

review a judge's evidentiary rulings." *In re Disqualification of O'Grady*, 170 Ohio St.3d 1201, 2022-Ohio-2854, 209 N.E.3d 725, ¶ 10.

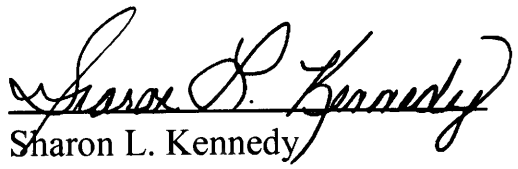
Accordingly, this is not the appropriate forum to determine whether Judge Swenski properly ordered Thompson to pay attorney fees as a sanction under Civ.R. 11 or whether the court properly held Thompson in contempt of court for failing to comply with a prior court order. And it is outside the scope of this matter to determine whether Judge Swenski erred by informing Thompson that the court would not permit evidence of the plaintiff's alleged sexual abuse during the upcoming hearing. "The matters complained of here fall within the discretion of the judge in a custody case, and it is not the chief justice's role in deciding an affidavit of disqualification to second-guess such decisions." *In re Disqualification of Goldberg*, 165 Ohio St.3d 1285, 2021-Ohio-3628, 180 N.E.3d 1185, ¶ 4.

Therefore this claim is without merit.

Conclusion

For the reasons explained above, the affidavit of disqualification is denied. The case may proceed before Judge Swenski.

Dated this 6th day of September, 2023.



Sharon L. Kennedy
Chief Justice

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