

IN RE DISQUALIFICATION OF BERKOWITZ.

217 WILLIAMS, L.L.C. v. WORTHEN

AND

WORTHEN v. DIXON.

**[Cite as *In re Disqualification of Berkowitz*, 152 Ohio St.3d 1227,
2017-Ohio-9425.]**

*Judges—Affidavits of disqualification—R.C. 2701.03 and 2701.031—Affiant failed
to meet statutory filing deadline—Affidavit dismissed.*

(No. 17-AP-094—Decided September 1, 2017.)

ON AFFIDAVIT OF DISQUALIFICATION in Hamilton County Municipal Court Case
Nos. 17 CV 14229 and 17 CV 14239.

O’CONNOR, C.J.

{¶ 1} John H. Forg, counsel for Steven Worthen, has filed an affidavit with the clerk of this court under R.C. 2701.03 and 2701.031 seeking to disqualify Judge Joshua Berkowitz from presiding over any further proceedings in the above-referenced cases, which have been consolidated.

{¶ 2} Mr. Forg claims that Judge Berkowitz displayed personal bias against him in a separate case, and Mr. Forg fears, based on the judge’s alleged previous conduct toward him, that the hearing in the underlying matters will not be fair and impartial. According to Mr. Forg’s affidavit, the judge’s allegedly biased conduct occurred on or around February 1, 2017.

{¶ 3} Mr. Forg filed his affidavit of disqualification on September 1, 2017, and in his affidavit, he noted that the next hearing in the underlying cases is scheduled for September 6, 2017. Under R.C. 2701.03(B), an affidavit of disqualification must be filed “not less than seven calendar days before the day on

which the next hearing in the proceeding is scheduled.” Accordingly, any affidavit in this case should have been filed on or before August 30.

{¶ 4} This statutory deadline may be set aside only “when compliance with the provision is impossible,” such as when the alleged bias or prejudice occurs fewer than seven days before the hearing date or the case is scheduled or assigned to a judge within seven days of the next hearing. *In re Disqualification of Leskovyansky*, 88 Ohio St.3d 1210, 723 N.E.2d 1099 (1999). Mr. Forg avers that he learned that the underlying cases were reassigned to Judge Berkowitz on August 24, 2017. But even assuming that that is true, he still had six days to timely file an affidavit by the August 30 deadline. Therefore, this fact did not make it impossible for him to comply with the statutory deadline. Mr. Forg further avers that he filed a disciplinary grievance against Judge Berkowitz on August 28. But the filing of a grievance is irrelevant to whether it was impossible for him to comply with the seven-day filing requirement for an affidavit of disqualification.

{¶ 5} Because Mr. Forg has not set forth sufficient reasons for setting aside the statutory filing deadline, his affidavit is dismissed as untimely.
