

**IN RE DISQUALIFICATION OF CARR.
THE CITY OF CLEVELAND v. MOBLEY,
THE CITY OF CLEVELAND v. VANCE,
AND**

ALL OTHER PENDING CRIMINAL AND TRAFFIC CASES.

[Cite as *In re Disqualification of Carr*, 159 Ohio St.3d 1233, 2020-Ohio-2868.]

Judges—Affidavits of disqualification—R.C. 2701.03 and 2701.031—Judge put integrity of judicial system at issue when hearing nonjail criminal and traffic cases following municipal court’s administrative order rescheduling such cases during COVID-19 pandemic—Judge disqualified from nonjail criminal and traffic cases during pendency of administrative order—Affiant failed to demonstrate bias or prejudice toward public defender’s office or against all defendants in criminal and traffic cases—Request for blanket disqualification order denied.

(No. 20-AP-026—Decided March 25, 2020.)

ON AFFIDAVIT OF DISQUALIFICATION in Cleveland Municipal Court Case Nos.
2019 CRB 011888, 2019 TRD 023537, and 2019 CRB 021399.

O’CONNOR, C.J.

{¶ 1} Mark A. Stanton, the Cuyahoga County Chief Public Defender, has filed an affidavit pursuant to R.C. 2701.03 and 2701.031 seeking to disqualify Judge Pinkey S. Carr from the two above-referenced matters and all other criminal and traffic cases pending before her.

{¶ 2} On March 13, 2020, the Cleveland Municipal Court issued a press release indicating that the court was rescheduling all nonjail criminal and traffic hearings for a three-week period starting March 16, in an effort to stop community

spread of COVID-19 and to protect the safety of persons appearing before the court and of court employees. Also on March 13, the administrative judge of the municipal court issued an administrative order rescheduling those criminal cases for exactly three weeks from the originally scheduled date and time.

{¶ 3} Mr. Stanton avers that despite the administrative order, Judge Carr continued hearing nonjail criminal cases on and after March 16 and that she issued *capias* warrants authorizing the arrests of some—but not all—defendants who failed to appear for their originally scheduled hearings. Mr. Stanton argues that Judge Carr’s conduct—not only by going forward with those hearings but also her specific actions in some of those matters—demonstrated bias and a disregard for the welfare of defendants and their attorneys.

{¶ 4} Judge Carr filed a response to the affidavit in which she denied that her actions demonstrated bias and requested that the affidavit be denied. Among other things, Judge Carr asserts that the administrative order did not specify how to proceed if a defendant who is not in jail appeared for his or her previously scheduled case. She states that she thanked defendants who appeared in her courtroom on March 16, 17, or 18 for showing up and that if a resolution was reached, she suspended their fines and costs in appreciation for their time. Judge Carr did not directly address Mr. Stanton’s allegation that she issued arrest warrants for some no-show defendants, although she attached to her response a news article quoting her as stating that she had not intended to issue those warrants.

{¶ 5} Regardless of her intentions, by continuing to hear cases after issuance of the municipal court’s administrative order, Judge Carr caused confusion and sent mixed messages to the public at a time when clarity and uniform application of the administrative order were necessary. Indeed, the judge may have incentivized parties to appear for their cases if they knew she was continuing to hold hearings, defeating the purpose of the administrative order. In addition, Judge Carr has failed to sufficiently respond to the allegation that she arbitrarily issued

warrants authorizing the arrest of some defendants who failed to appear for their originally scheduled hearings, despite the rescheduling of those matters. If the allegation is true, her actions eroded the public's confidence in the integrity of the judiciary and created at least the appearance of bias. "[A] judge's disqualification may be appropriate to avoid an appearance of impropriety or when the public's confidence in the integrity of the judicial system is at issue." *In re Disqualification of Crawford*, 152 Ohio St.3d 1256, 2017-Ohio-9428, 98 N.E.3d 277, ¶ 6.

{¶ 6} However, the relief sought by Mr. Stanton differs from most disqualification requests, in which a litigant seeks a judge's removal from a single case. Mr. Stanton seeks a duly elected judge's indefinite disqualification from her entire criminal and traffic dockets. "The standard for such a disqualification request is necessarily high." *In re Disqualification of Williams-Byers*, 157 Ohio St.3d 1269, 2019-Ohio-5448, 138 N.E.3d 1179, ¶ 3. Mr. Stanton has not demonstrated that Judge Carr has illustrated a bias toward the public defender's office "that manifests itself in the judge's official duties, thereby materially impacting the fair and impartial administration of justice" in her courtroom, *In re Disqualification of Burge*, 142 Ohio St.3d 57, 2014-Ohio-5871, 28 N.E.3d 48, ¶ 12. Nor has Mr. Stanton established that Judge Carr is biased against all defendants in criminal and traffic cases. Rather, the crux of Mr. Stanton's affidavit of disqualification is limited to Judge Carr's handling of cases subject to the municipal court's March 13 administrative order. Mr. Stanton, therefore, has not met the heavy burden to show that he is entitled to the extraordinary relief sought in his affidavit.

{¶ 7} For the reasons explained above, the affidavit of disqualification is granted in part and denied in part. Judge Carr is disqualified from presiding over hearings in nonjail criminal and traffic cases during the pendency of the Cleveland Municipal Court's March 13, 2020 administrative order or any orders extending the time frame of the original order. Mr. Stanton's request for a blanket order

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disqualifying Judge Carr from all criminal and traffic cases is denied. Mr. Stanton's emergency motion is denied as moot.
