

IN RE DISQUALIFICATION OF WISEMAN.

NEAL v. LILLY.

[Cite as *In re Disqualification of Wiseman*, 162 Ohio St.3d 1220,
2021-Ohio-251.]

Judges—Affidavits of disqualification—R.C. 2701.03—Affiant failed to demonstrate bias or prejudice by judge—Disqualification denied.

(No. 20-AP-112—Decided January 4, 2021.)

ON AFFIDAVIT OF DISQUALIFICATION in Montgomery County Court of Common Pleas, General Division, Case No. 2017 CV 03306.

O’CONNOR, C.J.

{¶ 1} Plaintiff Leo Neal Jr. has filed an affidavit pursuant to R.C. 2701.03 and Article IV, Section 5(C) of the Ohio Constitution seeking to disqualify Judge Mary Wiseman and all other judges of the Montgomery County Court of Common Pleas from the above-referenced civil case.

{¶ 2} Mr. Neal alleges that Judge Wiseman and other judges of the court have issued a series of prejudicial rulings against him. He believes that the judges are biased because the defendant’s wife was a court reporter for over 25 years and had a professional relationship with many county judges.

{¶ 3} Judge Wiseman submitted a thorough response to the affidavit and requests that it be denied. The judge avers that she does not know the defendant’s wife and that based on the court’s employment records, the court has never employed her.

{¶ 4} In disqualification requests, “[t]he 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

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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, 469, 132 N.E.2d 191 (1956). “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.

{¶ 5} Mr. Neal has not established that Judge Wiseman has hostile feelings toward him or has formed a fixed anticipatory judgment on any issue in the underlying case. Nor has Mr. Neal set forth a compelling argument for disqualifying Judge Wiseman to avoid an appearance of partiality. It is well settled that “affidavits of disqualification cannot be used to remove a judge from a case simply because a party is particularly unhappy about a court ruling or a series of rulings.” *In re Disqualification of D’Apolito*, 139 Ohio St.3d 1230, 2014-Ohio-2153, 11 N.E.3d 279, ¶ 5. And given Judge Wiseman’s response to the affidavit, she has no disqualifying relationship with the defendant.

{¶ 6} The affidavit of disqualification is denied. The case may proceed before Judge Wiseman.
